

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ZENIMAX MEDIA INC. and ID ) 3:14-CV-1849-K  
SOFTWARE LLC )  
Plaintiffs, )  
)  
VS. )  
) DALLAS, TEXAS  
)  
OCULUS VR, LLC, PALMER )  
LUCKEY, FACEBOOK, INC., )  
BRENDAN IRIBE and JOHN )  
CARMACK, )  
Defendants. ) January 26, 2017

TRANSCRIPT OF JURY TRIAL, VOLUME 20  
BEFORE THE HONORABLE ED KINKEADE  
UNITED STATES DISTRICT JUDGE

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1 JURY TRIAL - JANUARY 26, 2017

2 P R O C E E D I N G S

3 THE COURT: Okay. I don't know what happened to my  
4 charge.

5 You got the charge?

6 THE CLERK: Yes, sir. Ronnie is bringing it in.

7 THE COURT: Okay. Timewise, do you want 60 minutes  
8 and then stop you?

9 MR. SAMMI: 60 to 65.

10 THE COURT: I don't care.

11 MR. SAMMI: Whatever I don't use will come out of the  
12 rest.

13 THE COURT: It's your call.

14 MR. SAMMI: How about 65 minutes, sir?

15 THE COURT: Do you want a five-minute warning?

16 MR. SAMMI: That will be great.

17 THE COURT: At 60?

18 MR. SAMMI: Yes, sir.

19 THE COURT: Do you need any warnings?

20 MS. WILKINSON: Ms. Keefe is going to give me my  
21 warnings, Your Honor.

22 MS. KEEFE: I have the pink paper for her, Your  
23 Honor.

24 THE COURT: Do what?

25 MS. KEEFE: I have pink paper for her.

1 THE COURT: It's like moot court. We're back in moot  
2 court.

3 MS. WILKINSON: You know how we like our cards.

4 THE COURT: "Stop." I mean maybe you will have more  
5 success than I've had. Maybe. I said stop and nobody does  
6 anything.

7 MR. SAMMI: As a matter of fact, Judge, I think  
8 Ms. Cohen is going to give me a warning, so you don't need to  
9 do anything.

10 THE COURT: Ms. Cohen. Now, when you said Cambridge,  
11 you meant Harvard?

12 MS. COHEN: Yes, I did.

13 THE COURT: I mean, why are y'all -- be proud of  
14 that. That's great. You're not bragging to say that. Some of  
15 us wish we had a chance. They don't even let me go into the  
16 town. I have to have a special visa.

17 MS. COHEN: I wish I had gone to Baylor, Your Honor.

18 THE COURT: Verdict for Plaintiff.

19 Okay. Y'all are all already. Everybody have what  
20 they need?

21 MR. SAMMI: Yes, sir.

22 THE COURT: Any of you need throat things? Do you  
23 need any of these? You got something? Do you have water?

24 MR. SAMMI: Water is fine.

25 THE COURT: You've got water?

1 MS. WILKINSON: Yes, sir.

2 THE COURT: Okay. Okay. All right. Here we go.

3 SECURITY OFFICER: All rise for the jury.

4 (Jury in)

5 THE COURT: What is this fancy water? Is our water  
6 not good enough for y'all?

7 All right. Y'all be seated. And I think we're ready  
8 for the arguments, for both lawyers, and then I will make give  
9 you some more instructions after that.

10 Okay. Go ahead, Mr. Sammi.

11 BY MR. SAMMI: Thank you, Judge.

12 CLOSING STATEMENT

13 BY MR. SAMMI:

14 Good morning. After -- good morning? Oh my  
15 goodness. Good afternoon.

16 Boy, let me try again.

17 Can I start again, do a do-over, Judge?

18 THE COURT: It's okay.

19 MR. SAMMI: Good afternoon. It's a pleasure to speak  
20 with you directly again after three weeks.

21 We're at the end of the case and it's soon going to  
22 be turned over to you for a decision.

23 You've patiently heard many witnesses over the last  
24 three weeks. You have had to wrestle with a lot of complicated  
25 information. I'm sure it's been a challenge to keep it all

1 straight, and I'm going to try to review that evidence with you  
2 this morning.

3 But first, before I begin, I want to thank you on  
4 behalf of my client, myself, my entire team, that we have a  
5 deep appreciation for your service.

6 We have comfort that you will consider this evidence  
7 objectively and reach a fair decision. We have confidence in  
8 your judgment.

9 So what is this case about? Let's strip away all the  
10 talk about the technology just for a moment. We're here  
11 because the Defendant stole something very valuable,  
12 breakthrough technology that the Plaintiffs developed that  
13 finally made a consumer friendly virtual reality experience  
14 possible in the palm of your hand.

15 And as I review the evidence with you, it will become  
16 clear this was not a heist that was difficult to see. It was  
17 done boldly, it was done unmistakably, and it was done right  
18 before our eyes.

19 And the Defendants' only response has been to try to  
20 confuse and misdirect, ultimately destroy the evidence of the  
21 heist itself.

22 Defendants in their opening accused us of rewriting  
23 history. There's been rewriting of history, but it is not our  
24 fairytale. It is being told by the Defendants.

25 The Defendants' story is a myth. It is an attempt to

1 con you with a fantasy that Palmer Luckey, a young man who  
2 loved VR but who doesn't code software, single-handedly created  
3 virtual reality.

4 One thing that is obvious in this case, the VR  
5 technology was developed by John Carmack, a singular  
6 programming genius who is everywhere. His name is on our lips  
7 every time we talk technology. Get it from Carmack. That is  
8 what we hear again and again.

9 You heard from our expert Dr. David Dobkin, a  
10 Princeton University Dean and a leading figure in the field in  
11 computers.

12 He testified that he studied ZeniMax and Oculus code  
13 for two years, 4 terabytes of it, and he found with absolute  
14 certainty that our code was copied by Oculus. He found literal  
15 copying as well as massive amounts of nonliteral copying.

16 Now, it is no surprise that yesterday we heard from  
17 Defendants' expert Ms. Frederiksen-Cross who said the exact  
18 opposite. She said there had been no copying at all, none.

19 Now, Dr. Dobkin's analysis is sound and  
20 well-reasoned, but it's also based upon evidence. That tech  
21 transfer that I keep talking about -- why go back to the  
22 well? -- that supports Dr. Dobkin's opinion.

23 Ms. Frederiksen-Cross ignores that.

24 But happily this case is actually far simpler than a  
25 battle of the experts.

1           The evidence in this case and our own common sense  
2       leads us to no other conclusion than the Defendants have stolen  
3       our intellectual property.

4           why do I say that? Let's start with the obvious.

5           To believe anything else, you have to conclude that  
6       Palmer Luckey, Brendan Iribe, and two friends joined forces at  
7       Oculus in July of 2012 to create a VR business with some of the  
8       most challenging technical work imaginable, but the three of  
9       them, including Mr. Iribe, had no VR experience at all.

10          And the fourth, Mr. Luckey, was a hobbyist who  
11       couldn't code software.

12          Do you think they could go from what was in that box  
13       to the sophisticated Oculus DK1 with its complicated software  
14       on their own?

15          Do you believe that they somehow managed without any  
16       use of ZeniMax technology to just hire some engineers and  
17       create this highly sophisticated VR product in less than six  
18       months from July 2012 to January 2013? Does that seem  
19       probable? Does that seem possible?

20          The evidence shows that the actual VR breakthrough  
21       occurred in March 2012 when Mr. Carmack, after experimentation  
22       and research at id -- in id's offices, on id's computers, using  
23       id's resources -- created what he called "the best damn VR demo  
24       the world has ever seen." Those are Mr. Carmack's words, not  
25       my words.

1 Mr. Carmack did that before he met any Defendant,  
2 before he met any other Defendant.

3 And that VR headset was ready to go. It was ready to  
4 go on the Sony, it was ready to go on a VR 1000. All that work  
5 is owned by ZeniMax.

6 Let's not ignore what's clear. Where was the debut  
7 of this huge technological achievement? That occurred at an  
8 industry convention called E3 in June 2012 in ZeniMax's booth.  
9 Other than Mr. Carmack, not a single Defendant was even there.

10 It should not go unmentioned that the E3 prototype  
11 you've seen in this case, in this courtroom was Plaintiffs'  
12 exhibit, because it was in Plaintiffs' possession and  
13 Plaintiffs own it. Plaintiffs developed it.

14 After deciding to go into the VR business but lacking  
15 the resources in VR expertise, what did Mr. Luckey, Mr. Iribe,  
16 and the two other Oculus founders do? What does your common  
17 sense tell you they would do?

18 They did, as some experts for the defense suggested,  
19 just go to the library and look up how to do VR, how to solve  
20 those problems, go online. If it were that simple, how many  
21 companies would have been in the VR space so long ago?

22 No, these four went to the one company in the world  
23 at that time who had shown that it had already solved the VR  
24 challenge, and that was ZeniMax.

25 But before ZeniMax was willing to give Oculus access

1 to any of its valuable information, ZeniMax made Palmer Luckey  
2 sign a nondisclosure agreement. We talked about that document  
3 a lot. It is a legal agreement which provided, among other  
4 things, that ZeniMax and ZeniMax alone owned all of the VR  
5 technology it was sharing.

6 And if Oculus used that technology and made -- or  
7 made reference to it in developing other technology, it was  
8 still owned by ZeniMax.

9 Then there's a mountain of evidence showing a  
10 continuous transfer of VR technology from ZeniMax to Oculus,  
11 just what you would expect, all of this technology was  
12 requested by Oculus, sent to Oculus by ZeniMax.

13 But now the Defendants insist after all this evidence  
14 and against our common sense that they didn't use any of the  
15 technology that was being transferred. They asked for it but  
16 never used it. It was just free feedback.

17 The evidence actually shows that the Defendants knew  
18 the code, the secrets, the technological know-how they needed  
19 was all owned by ZeniMax, and the Defendants indeed needed it.  
20 But ZeniMax wanted to be paid. So the Oculus CEO, Mr. Iribe,  
21 sent a business proposal and requested from ZeniMax a perpetual  
22 license to the source code shared by Carmack.

23 Please note the word "shared."

24 This was source code already provided by Carmack to  
25 Oculus.



1           Now, you only request a license to software if you  
2           don't own the property. A license gives you legal permission  
3           to use someone else's source code. So when Mr. Iribe proposes  
4           a license, he is expressly acknowledging that Oculus is using  
5           ZeniMax source code that Mr. Carmack shared with him in their  
6           VR product, in their SDK.

7           Let's talk about Mr. Todd Hollenshead for just a  
8           moment, the president of id, who wrote back to Mr. Iribe in  
9           that proposal for equity.

10           Mr. Hollenshead refers to the hardware modification  
11           and software work by Mr. Carmack and offers in exchange for  
12           compensation, a license to use the computer code developed by  
13           Mr. Carmack.

14           At the very top of that proposal, if you remember, at  
15           the very top it says "subject to nondisclosure agreement."

16           Let's pause on Mr. Hollenshead just for a second.

17           You will recall that the Defendants' counsel, in her  
18           opening statement, made a pretty big deal about  
19           Mr. Hollenshead. She promised that Defendants would bring  
20           Mr. Hollenshead here, the one independent person, to court and  
21           he would say Palmer Luckey was the inventor of VR and that  
22           ZeniMax never made any claim of the VR technology until the  
23           Facebook deal was announced.

24           what did Mr. Hollenshead actually say? He said that  
25           he always believed that this valuable VR technology was owned

1 by ZeniMax, and he said that ZeniMax repeatedly and  
2 consistently demanded compensation from Oculus if it wanted to  
3 use ZeniMax's technology.

4 Now, let me take a moment to talk about this  
5 distinction between hardware and software. It's been talked a  
6 lot about in this case.

7 And you will hear this a lot. You will hear "their  
8 game on our headset." "Their game on our headset."

9 Let's take a look at this slide and let's get to the  
10 bottom of this, because this three weeks of evidence shows  
11 this.

12 This is before John Carmack ever met any of the  
13 Defendants. What is on the right side? This is id's VR  
14 engine. This is VR testbed. This is Doom 3 BFG. This is the  
15 technology, head and neck modeling, time warp, latency  
16 reduction, chromatic aberration, distortion correction, time  
17 warp. That technology is not a game. It makes VR possible.  
18 It has some game content associated with it, but the  
19 fundamental technology is VR technology.

20 Now, this -- this demo, this was in that diamond,  
21 that's the best damn VR demo the world has ever seen and John  
22 Carmack knew it.

23 It was ready to go. That's hardware. Ready to go on  
24 the Sony, on a VR 1000, on an Oculus Rift.

25 But what happened? You need that technology to make

1 that hardware, the lens and -- two lenses and the screen, make  
2 it into something.

3 And what's this case about? Let's take a look.

4 They took that triangle and converted it into their  
5 SDK. And where did that SDK go?

6 Boom. It went right into that hardware and then they  
7 called it the Oculus Rift, because without it, you can try and  
8 you can go and you can sell your lenses and your screen and you  
9 can have a business on the internet or you could try to make a  
10 bigger business, but I don't think you can sell that -- what's  
11 in that box to Facebook for \$2 billion. You need that. That's  
12 what this case is about.

13 Ladies and gentlemen, if they could make it, why did  
14 they take it? If they could make it, why did they take it?

15 If it was free, why did they take it? If it was  
16 publicly known, why did they take it?

17 Of course they didn't get our VR code and technical  
18 assistance and throw it in the trash. Of course they used it.  
19 That's why they requested it. They needed it as the foundation  
20 of their business.

21 There's another glaring piece of evidence in this  
22 case which is extraordinary and thankfully it's rarely seen in  
23 court.

24 It's on that board. The deliberate destruction of  
25 key evidence after the Defendants got the notice of this

1 lawsuit. Let me say that again. The deliberate destruction of  
2 evidence so that you can't see it after notice was given of  
3 this lawsuit.

4 Remember the shocking testimony about destroying  
5 evidence did not come from us. It came from Mr. Andrew Rosen,  
6 an independent court-appointed computer crime expert -- not our  
7 expert, not their expert, an expert appointed by His Honor --  
8 who testified that Oculus computers, including most importantly  
9 the computer of John Carmack, was deliberately wiped and  
10 evidence on it permanently destroyed.

11 So we ask ourselves, are these the actions of  
12 innocent people, Defendants with nothing to hide, or do these  
13 actions show a consciousness of guilt? Are these the actions  
14 of people who know the evidence will prove what our common  
15 sense already tells us?

16 why wouldn't they say we're happy for you to look at  
17 our computers, go ahead, and you will find that there's nothing  
18 there?

19 The answer is obvious. They have 2 billion reasons  
20 to hide the evidence.

21 what happened here is clear.

22 Let's detail the claims and let's jump into the  
23 evidence.

24 Look at our first slide.

25 This is not a case like television, a criminal case

1 where you need beyond a reasonable doubt. The standard here  
2 for almost all of these claims, and His Honor has instructed  
3 you and you have those instructions, is a preponderance of the  
4 evidence. That's a scale. And that means if it tilts more one  
5 way than the other, that's a preponderance, more than  
6 50 percent.

7 Let's start with trade secret misappropriation.

8 The existence of a trade secret.

9 Let's walk through.

10 what's a trade secret? It's a formula, a pattern, a  
11 device, a compilation that gives you an advantage. It's not  
12 just source code. Trade secrets are software, know-how,  
13 technical advancements, all of those qualify as trade secrets.  
14 What must you consider to decide whether something is a trade  
15 secret? Six factors. They're in your packet. Not all of them  
16 apply and not all of them need be fulfilled.

17 Things for you to consider.

18 Let's take a look. What are the trade secrets in  
19 this case?

20 ZeniMax's seven. We've heard a lot about these. I  
21 won't repeat them all, but they're listed there for you, and  
22 they're listed in your packet. There are seven. Mr. Carmack  
23 made them, Mr. Carmack did, he owns them, and so does ZeniMax.

24 Now, Mr. Carmack used these trade secrets to create,  
25 as I said before, the best VR demo the world has ever seen.

1           And here he is. I asked him. I said, "So when you  
2 think that you have something that is probably the best damn  
3 thing in the world, that means something, doesn't it?"

4           Yes, it does. It certainly does. He's had multiple  
5 awards, lifetime achievement awards. The man is a genius. It  
6 was ready to go on any headset.

7           Now, let's look at the next slide. Were these trade  
8 secrets made public? What makes it the world's best VR demo is  
9 that nobody else had it, and nobody else could make it.

10           We heard from Professor Gleicher. These technologies  
11 were not found in the public domain. Each one of these seven  
12 technologies addressed a critical issue. But it's very  
13 important that we stop for a minute and we think about the two  
14 experts we heard from the Defendants, Professor Howe and  
15 Professor Balakrishnan. And their expert opinions were as  
16 follows: Everything is public. Everything can be found at the  
17 library. Everything is in a paper.

18           100 hours? 100 hours. We have been in court for  
19 three weeks, and all of this could be done by hiring a couple  
20 of coders and putting them in a room and giving them 100 hours.  
21 Some were as low as 5 hours. 22 hours. 18 hours. But do we  
22 hear anything about a clean room at Oculus? No.

23           They could have written several versions of our trade  
24 secrets while we've been here at trial.

25           Also, here is another reason that we know that the

1 trade secret weren't public. why was E3 such a big deal?

2 I asked, if you recall, Professor Howe, can you name  
3 for me one commercial VR headset that had low latency and was  
4 ready to go before 2012, 2011, 2010, 2009, 2008? No. If  
5 everybody knew it, there would be companies everywhere. This  
6 is a great country. There is a lot great people who want to do  
7 a lot of great things.

8 Now, how do we know that it was not public as well?

9 Remember the blog post, Mr. Carmack, the paper that  
10 he wrote? Mr. Carmack admitted there's no source code in that  
11 blog post.

12 How about open source? We've heard a lot about open  
13 source. I asked Mr. Carmack, weren't we trying -- didn't  
14 ZeniMax take out virtually all of the VR technology from that  
15 open source? And that open source cannot run a VR experience.

16 Did we keep these trade secrets secret?

17 Physical measures, physical security, technology  
18 security, source code repository, security camera footage,  
19 badges, legal protections -- we're going to talk about these,  
20 NDAs, copyrights, trade secrets, trademarks. Yes, we kept it  
21 secret.

22 what are the value of these trade secrets?

23 \$2 billion.

24 They're valued by Facebook because they bought them  
25 for \$2 billion, and they knew what they were buying. And I

1 will get into that in just a little bit later.

2 what did it take to get there? How much investment?  
3 Let's take a look. How much investment and effort was spent?  
4 And there's a lot of testimony and argument back and forth  
5 between -- was ZeniMax into VR? Was ZeniMax not into VR?

6 Let's go back to Mr. Carmack, the man who is the  
7 genius who said in May of 2012, right around the time that the  
8 VR demo was being made, the entire genre of first-person games  
9 is an attempt at virtual reality.

10 If you remember, ladies and gentlemen, when I first  
11 spoke to you, we talked about Pac-Man to first-person shooter,  
12 to 3D, every step getting closer into the game, all of this  
13 technology funneling towards one thing and one thing only, a VR  
14 demo.

15 Now, what did Oculus have? Did Oculus have these  
16 trade secrets? Let's take a look. No. We talked about the  
17 box. We know what's not in the box. No software was in the  
18 box.

19 Mr. Luckey, not a software guy, more of a hardware  
20 guy.

21 Mr. Nate Mitchell, his friend and founder. I'm  
22 highly skeptical that he's much of a software engineer. And  
23 that's okay, but we have to realize who is a real, real genius  
24 here.

25 There are some emails that tell us. This is



1 Mr. Palmer Luckey to Mr. Nirav Patel, how hilarious is it that  
2 thousands of people are going to pile into a room and listen to  
3 a speech given by a 20-year-old who got lucky and was blessed  
4 by Carmack?

5 I read that as blessed by trade secrets, blessed by  
6 id, blessed by ZeniMax.

7 How did the Defendants acquire the trade secrets?  
8 That's the next step. How did they get them?

9 Two ways. Breach a confidential agreement, breach a  
10 contractual relationship, or get them by improper means, and  
11 they did both.

12 what's the confidential relationship? We will dig  
13 into this later a little bit more in the contract. This is it.  
14 This is the NDA. It's the numbers.

15 We say numbers in this case a lot, and I always call  
16 this Plaintiffs' Exhibit Number 1, and there's a reason why  
17 it's Plaintiffs' Exhibit Number 1. It is very important.

18 This is a relationship, one of trust and confidence  
19 that was breached to get our trade secrets.

20 How was it breached? Right there. Almost  
21 immediately, let's go a hotel room, nobody tell id, nobody tell  
22 ZeniMax, and let me show this information to other people. The  
23 heist starts here. The heist starts here.

24 How else? How did Oculus use our info and pass it  
25 off as their own?

1           That's just a better-looking way of me putting emails  
2           on the ELMO and me trying to get documents up and me trying to  
3           hold a board and show you how to go back to the well. There it  
4           is. Over and over and over and over again. We know them by  
5           heart almost, dot, dot, dot, time to open up Doom 3 source?

6           I don't know how to correct gravity in gyro.

7           Basically at this point I need Carmack's code.

8           I think the best starting point to write software is  
9           Carmack's code.

10           what else happened? Improper means, not just breach  
11           of a relationship. Improper means. Mr. Carmack stole 10,000  
12           files.

13           Do we honestly think that there were 10,000 emails  
14           about happy birthdays, dentist office, or notes to friends and  
15           family?

16           He admits in this court to copying those files.  
17           Where did they go? They went to an Oculus MacBook. They went  
18           to an Oculus desktop.

19           Is it any coincidence that on those Oculus computers  
20           the ZeniMax information was found? And what's the answer? I  
21           didn't use it. It provided no benefit to me. It was useless  
22           to me.

23           That is what we hear. And it's on the same computer  
24           that you're doing work on Oculus and you're doing work by  
25           ZeniMax.

1           Now, let's see if they used it. Commercial use. How  
2 do we know?

3           Summer, fall, they used the Rage -- VR Rage testbed,  
4 and they went around the world. They got -- they did  
5 demonstrations, Unity, 3D, Epic Games, Valve. Even Mr. Carmack  
6 says, wow, that's a really, really impressive slate.

7           Did they show anything else, "they" being Oculus? We  
8 heard this testimony. Was there any other demo to show? No.  
9 Just us.

10           Let's take a look. Where did they go? Everywhere.  
11 We knew about some. We did not know about all.

12           Who else used our trade secrets?

13           Mr. Giokaris, do you remember him? He gets forgotten  
14 sometimes, but I always try to remind people. He was given  
15 access to source code from the creator of Rage, who would be  
16 John Carmack, while he was working on HMD warp, and he said I  
17 could have cut and pasted that into the code.

18           And you know what we heard? Do you know what we  
19 heard Defendants' experts say? We heard Defendants' expert,  
20 Ms. Frederiksen-Cross say he was playing around. He might have  
21 been playing around with it.

22           That's not playing around when you are trying to  
23 solve a problem.

24           Let's take another example.

25           Mr. Cooper. Mr. Cooper, the evidence shows, was

1 working on chromatic aberration correction for one month. One  
2 month. And then what happened? He was forwarded code from  
3 ZeniMax, and 24 hours later he checked into the Oculus  
4 repository the solution for chromatic aberration.

5 Now, what happened in those 24 hours? Did Mr. Cooper  
6 go to the library? Did he Google it? What do you think? What  
7 do I think? I think we all know what he did. He used what he  
8 was given in his work, as we all do as normal people.

9 Now, commercial use of ZeniMax code. This is  
10 Mr. Brendan Iribe, the CEO. When your boss sends you something  
11 and says, here, look at this, I assume you've seen this,  
12 let's -- are we doing the same? That is a big question mark at  
13 the end of that sentence. I assume we're doing the same.  
14 Yeah. If I'm on the receiving end of that, I'm going to do it.  
15 Of course I am.

16 How about Mr. Luckey to Mr. Jack McCauley and Nirav  
17 Patel? You heard Nirav Patel sit in that chair and say I made  
18 the sensor from scratch. Here is the picture of me in the  
19 factory. Okay.

20 What does Mr. Luckey email to Mr. McCauley and  
21 Mr. Patel?

22 Be careful about putting Carmack on the emails. Even  
23 if we don't really know what we're doing, we should make an  
24 effort to appear as we do.

25 Think about that for minute. We heard from

1 Mr. LaValle. Remember I asked Mr. LaValle, when you first got  
2 to Oculus, you saw a really awkward exchange between Brendan  
3 Iribe and Jack McCauley saying stay away from Carmack. These  
4 things add up, tell you something.

5 who else is confirmed use?

6 Professor Dobkin. He's confirmed that he's looked  
7 through this code and confirmed that these trade secrets were  
8 used in Oculus's code.

9 Now, again, Ms. Frederiksen-Cross denies it, but I  
10 don't think her opinion is supported by the facts.

11 Now, why did they need our trade secrets? why do  
12 they need them? Because they are the foundation of Oculus.  
13 They are the foundation of Oculus.

14 Mr. Luckey says, yes, I would still be tinkering away  
15 on my own, and that's -- and that's -- it's not something to  
16 rub anybody face in, but if this is what your business is,  
17 that's great.

18 But if you're John Carmack, you can create something  
19 better. And John Carmack says this himself, this next slide.  
20 This is it. This is the heart of the case. This is Carmack,  
21 Mr. Carmack saying it himself.

22 "Everyone agrees they wouldn't exist as a funded  
23 company if it weren't for our involvement." That's the key.  
24 That is the foundation.

25 we heard Mr. Zuckerberg talk about foundation. Let's

1 talk about him for a minute.

2 Facebook knew. Facebook knew. I'll tell you how  
3 Facebook knew.

4 Mr. Zuckerberg flew down here for one day, and he sat  
5 in that chair under oath, and he looked at you, and he looked  
6 at me, and I asked him questions, and he said all of your  
7 clients' claims are worthless. I have had my people look into  
8 it. They don't have any merit at all.

9 I think he said something like, if I remember  
10 correctly the quote, I, like most of the people in this  
11 courtroom before we got sued never heard of ZeniMax.

12 Okay. So we're, you know -- just to aside. You  
13 never heard of ZeniMax?

14 I saw an email that you wrote to John Carmack after  
15 he met on your patio before you shook your hands on a  
16 \$3 billion deal. I was surreal meeting you, Mr. Carmack,  
17 because I grew up playing your games. He knows about id, he  
18 knows about ZeniMax.

19 And he says to you, to me, to us, to this entire  
20 court, he says all these claims are meritless.

21 And then I started asking questions, and the first  
22 thing I say is, well, did you know that for months and months  
23 Oculus went around the world and the only thing they had was  
24 the Rage and the Doom demo?

25 Do you know what he said? He said, "I don't believe

1     that's true."

2             And we had sat here a week before he got here, and we  
3     heard all that evidence from the Defendants themselves.

4             And I said, "well, do you know anything about the  
5     origins of Oculus? Did it ever come up after you bought them?"

6             Never came up.

7             That's really odd to me.

8             There's more evidence of use. And we'll get back to  
9     that in a second. But that quote, "if it's gone, it's gone,"  
10    that's from Mr. Zuckerberg.

11            I said, "well, did you know about what's on the  
12    board? Did you know that the evidence is destroyed?"

13            He said, "well, you know, if it's gone, it's gone."

14            We're not going to know the full extent of the use.

15            Mr. Mitchell's computer is up there too. You  
16    remember him. He came over to our offices here in Dallas with  
17    a desktop computer, download -- you heard him say it --  
18    downloaded Doom 3 BFG and related additional data. I think it  
19    was additional data.

20            So what additional data? The computer has gone  
21    missing.

22            Now, let's get to Mr. Rosen for a moment. When I  
23    used the term "wiping," I use that term to describe a process  
24    that is the direct result of a volitional act of a computer  
25    user that results in the permanent and irrevocable destruction

1 of information.

2 That means a person actively does something which  
3 results in the data permanently being destroyed.

4 what does that mean? That means that whatever has  
5 been deleted is beyond our reckoning. We can no longer see it.

6 92 percent of a software coder's computer is zeros,  
7 92 percent.

8 By the way, that destruction, it wasn't just by  
9 chance. We have to understand the timing of that destruction.

10 when you're about to get sued, or if somebody writes  
11 you a letter and said, you know what, I think we have some  
12 claims on intellectual property and the inside lawyer for your  
13 company sends a note to every employee and says, okay, we got  
14 some letters from ZeniMax. Then you start destroying evidence?  
15 You are under a duty to preserve evidence so that you, the  
16 jury, we could look at it and we could see what's there.

17 I talked about Facebook, talked about why -- it's not  
18 credible to me -- and I don't think it's credible to you. Now,  
19 if Mr. Zuckerberg doesn't know things, that may be because  
20 Mr. Zuckerberg doesn't want to know things or Facebook doesn't  
21 want him to know things. But there are people, obviously, at  
22 Facebook who knew a lot of things.

23 So, ladies and gentlemen, on page 18 for trade  
24 secrets, please. Yes. And I think the evidence shows it  
25 clearly. Oculus, Facebook, Palmer Luckey, Brendan Iribe, John



1 Carmack all utilized, misappropriated our trade secrets, every  
2 single one of them.

3 Now, how many -- let's talk about damages for trade  
4 secrets for a moment. How do we show that? Let's look at the  
5 next slide.

6 You heard from Mr. Dan Jackson. \$2 billion. Big  
7 number, right? That's because that is what Facebook paid for  
8 it and that's because what they are paying for is the software,  
9 because the magic is in the software. That is the value of the  
10 company. That diamond that moved from our software into that  
11 headset and made it something magical, that is worth a lot of  
12 money.

13 I will remind you, and I think we need to remember,  
14 Mr. Jackson's testimony is unrebutted. There was not another  
15 damages expert in this case.

16 MS. WILKINSON: Your Honor, I'm going to object to  
17 the implication that we have any burden to bring a damages  
18 expert.

19 THE COURT: You will be able to make your argument.  
20 This is argument.

21 MR. SAMMI: How do we know that the magic is in the  
22 software? Because Oculus said it in their investor deck, the  
23 magic is in the software. This is a hardware company.  
24 Shouldn't the magic be in the plastic and the lenses and the  
25 silicone? No. But the magic is in the software.

1           what else? Facebook confirmed it. "Without  
2 software, it wouldn't work, and we wouldn't have bought the  
3 company."

4           why is ZeniMax owed the entire value? Because  
5 Facebook would not have purchased it at all without ZeniMax's  
6 foundation.

7           we heard Mr. Zuckerberg say that. He actually said  
8 that it's very important to know the foundation of what your  
9 business is built on, and ten questions in he had no idea what  
10 the foundation of Oculus was.

11           There are alternative measures for damages. If you  
12 want to apportion it, if you want to share that pie and  
13 apportion it, there are ways to do it.

14           Mr. Jackson told us, you can split it up by display  
15 lenses, sensor, ergonomics, 75 percent. That's \$1.5 billion.

16           You can apportion it in another way, by thirds. And  
17 there is a reason for these apportionments, it is not just  
18 pulled out of thin air.

19           Let's see what Mr. Jackson said.

20           Kickstarter video. That's a Kickstarter video that  
21 Oculus put out itself. "The magic that sets the Rift apart is  
22 immersive stereoscopic 3D rendering" -- software -- "a massive  
23 field of view" -- screen -- "hardware" -- ultra low latency  
24 head tracking -- "software." That's two out of the three.

25           Mr. Zuckerberg: "VR is basically tracking,

1 rendering, and display," two out of the three. That's  
2 \$1.33 billion.

3 I will show you a chart for unjust enrichment for  
4 trade secret misappropriation and virtually many other claims.  
5 The instructions are in your packet.

6 Facebook, we just went through, 2 billion, 1.33 to  
7 1.5.

8 Mr. Carmack, how enriched have people gotten off of  
9 what was in that diamond on that first slide? \$101.4 million  
10 for Mr. Carmack?

11 Mr. Iribe, \$427 million, almost half a billion  
12 dollars for one person.

13 Mr. Luckey, \$206 million for one person.

14 I urge you that the entire value of what Oculus is  
15 built on is based on our technology.

16 Let's talk about copyright. What's copyright?  
17 What's a valid copyright? We have ownership of the copyright.

18 This is not in dispute, ladies and gentlemen. Let's  
19 take a look at the next slide.

20 Those are the copyrights filed with the United States  
21 Government, and they are valid. They cover source code and  
22 object code.

23 Source code. Confidential and proprietary  
24 information, not for disclosure, stamped. You can't stamp  
25 electronically, but you can put it right in there.

1 was there copying? was there copying?

2 Let's take a look.

3 There was a lot of testimony in this. Do you  
4 remember this? This was, I believe, just yesterday. Literal  
5 copying. And Ms. Frederiksen-Cross disagreed, she put a big  
6 "X," said no, no, this didn't happen.

7 And then I said, well, did you see that that literal  
8 source code was actually plugged in to the Oculus repository  
9 earlier?

10 "Well, I'm not sure I saw that. I'm not sure I saw  
11 that."

12 How about the fingerprint?

13 Dr. Dobkin: "That's a mistake."

14 Cosine scale. You're calling a tangent a cosine.  
15 Not a big mistake, but it's an interesting one. It's a  
16 mistake. Why would that mistake carry over? Why would that  
17 mistake carry over if you didn't copy it? It's pretty rare.

18 That's the open source version of it. We fixed it  
19 before it went open source, those couple of lines. Oculus  
20 didn't.

21 Let's take a look at Professor Dobkin. "I'm  
22 absolutely certain that Oculus copied and used ZeniMax's code."  
23 They're not exact copies. Nonliteral copying is copying.

24 Now, we heard this question from defense counsel to  
25 Ms. Frederiksen-Cross on every one of these trade secrets.

1           Ms. Frederiksen-Cross, do you see on there, the boxes  
2   that Dobkin has. Professor Dobkin, they don't -- does that  
3   code even look the same?

4           No, no, it doesn't even look the same.

5           That's the point of nonliteral copying. That is why  
6   you have to do an analysis and understand that it won't look  
7   the same, but it's copying.

8           This man spent two years looking at the code.

9           Now, let's take a look. There's the boxes, and if  
10   they want to say the boxes are silly or the colors are silly,  
11   that's okay. This is -- this is two years of work. Two years  
12   of work.

13           Now, the Defendants will say, well, it's only a small  
14   number of lines of code. Don't be fooled. Don't be fooled.  
15   The Defendants will say that, it's only a small number of  
16   lines.

17           Then here's the problem I keep running into. If it's  
18   a such small number of lines of code, then why can't they just  
19   go and write it themselves? If it's such a small amount of  
20   code, why do they got to keep going back to be the well? I  
21   just don't get it.

22           There is no evidence. Here is another thing that  
23   we've heard. No one -- this is a quote. No one will come in  
24   here and tell you that we copied their code. There is no  
25   evidence that we ever got source code -- "we," being Oculus.

1 we have Professor Dobkin.

2 who else do we have? We have Peter Giokaris. There  
3 was a shader file there, and that was used.

4 who else do we have? We talked about Mr. Cooper.  
5 You received source code. That is use. That is copying.

6 How about Mr. Carmack? I like this one a lot, but  
7 it's important evidence. Time to open up Doom 3 source,  
8 Mr. Mitchell. Let's go forward.

9 what about Mr. Carmack?

10 "If you write down on paper one thing at id and then  
11 you leave the next day and you write that same thing down  
12 somewhere else, do you consider that to be id's?

13 "If it was the same, that would be a copyright  
14 infringement."

15 Mr. Carmack seems to think that the law says if I do  
16 the same exact thing that I did at id -- it's not that anybody  
17 owns Mr. Carmack's brain. It's those specific solutions for  
18 problems that were worked on for id in their products in their  
19 offices on their computers. You can't just leave and type it  
20 back again. You can call it reimplementation, you can call it  
21 reproduction, you can call it what you want, but it is  
22 copyright infringement. And when he's in a hurry, you know you  
23 wrote the exact needed code well at a previous job. You only  
24 had one previous job for 20 years. That was at id.

25 On the verdict form, ladies and gentlemen, please,

1 question 7 and 8, we think yes for all of these.

2 Did each of the following Defendants directly  
3 infringe the copyrights? Yes. You can infringe copyrights by  
4 copying them yourselves. You don't have to be a coder if to  
5 infringe copyrights. If you make copies of it and send it to  
6 other people, if you make copies of and use it in your  
7 products. You can be vicariously liable for copyright  
8 infringement if you send it around your company and you know  
9 it's wrong.

10 Damages for copyright.

11 Mr. Jackson told us there's a floor, there's a  
12 negotiation. What would the -- what would the parties reach?  
13 What agreement would they reach? \$400 million. We urge you  
14 for question 14.

15 Let's talk about breach of contract for a moment.  
16 Valid, enforceable contract.

17 Now we're going to dig into the NDA if we can. Let's  
18 look at it, the who, the what, the how. Let's go.

19 Okay. The who?

20 Palmer Luckey, id Software, ZeniMax.

21 Now, I suspect that the Defendants will say, well, it  
22 was Palmer Luckey, not Oculus that signed that NDA. It was  
23 Palmer Luckey, not Oculus who signed that. But read it. Let's  
24 see what it says.

25 Let's go back -- let's go back, please.

1 Thank you, Mr. Frank.

2 "The receiving party," that is Mr. Luckey, "and each  
3 of the receiving party's officers, directors, employees, and  
4 counsel will be legally bound by the terms of this agreement."

5 That's Oculus.

6 Let's take a look at some other language here.

7 who was Oculus? Luckey was Oculus. Mr. Luckey was  
8 Oculus.

9 "When you signed the nondisclosure agreement, Oculus  
10 was you, correct?

11 "I was doing business under the name Oculus.

12 "Would it be fair to say that as of the time of the  
13 NDA, Oculus was you and you were Oculus?

14 "That seems pretty fair."

15 Indeed it does.

16 If I sign a contract as Tony Sammi and the next day  
17 and I go out and I incorporate some company and I try to get  
18 out of that contract, the law says no, you don't get out of it.

19 The what. The what. What is proprietary?

20 I'm sorry, the print is a little small. I tried my  
21 best at the top. Highly confidential and proprietary  
22 information.

23 Computer entertainment software, including virtual  
24 reality testbed software and related assets.

25 That is not limited to any particular program. It is



1 not limited to object code or source code.

2 How is proprietary information defined?

3 Scientific, technical, engineering, information,  
4 procedures, computer programs, whether as source code or object  
5 code, documentation, emails, technologies, plans, research,  
6 marketing.

7 what is not covered in the NDA? I mean, you can't  
8 have an NDA on the whole world. That's not fair. So what's  
9 not covered in the NDA?

10 what's not covered in the NDA is if you do something  
11 on your own without reference to or using my proprietary  
12 information, that is yours. Of course it is yours. I don't  
13 keep that. You made it, right? But it's got to be without use  
14 or reference to our technology. Independently developed. And  
15 I think the evidence shows with that tech transfer, the SDK was  
16 not independently developed.

17 How? How do you keep it safe? You have got to  
18 maintain its security, you have to restrict disclosures, you  
19 have got to not disclose it.

20 You can't use it to obtain a competitive advantage  
21 with respect to the disclosing party.

22 Ownership. "All proprietary information is and at  
23 all times shall be the exclusive property of the disclosing  
24 party."

25 Now, we've heard Mr. Carmack gives advice away for

1 free. Could he give away the VR testbed code for free? No.  
2 He had to ask permission. We know that, because he asked, said  
3 would it be acceptable for me to send it?

4 And we said, okay, but you have to sign an NDA.

5 You didn't just give it away.

6 You had to ask permission, right?

7 I did because it is technology that belongs to id,  
8 technology that belongs to ZeniMax.

9 Performance.

10 Next slide. Thank you.

11 Did we perform our end? Yes. We gave them the  
12 information.

13 Did they perform their end? Did they breach? Yes.

14 Let's take a look.

15 Demonstrations. There were demonstrations going on  
16 that we weren't aware of. That's Mr. Todd Hollenshead.

17 July 4th, the secret meeting -- I call it the secret  
18 meeting -- Defendants say, why do you call it the secret  
19 meeting? Of course I call it the secret meeting. Because it's  
20 things that we got under the NDA that nobody is telling id and  
21 ZeniMax about and they are showing it. That's a breach.

22 There is evidence that we've already seen. This all  
23 is things we don't have to go through again. It's all the same  
24 evidence in this case. Under breach of contract, flying it  
25 around the world. Lee Cooper, Peter Giokaris. Remember, don't

1 use it as competitive advantage. How about the tech transfer?  
2 without reference or use.

3 The verdict form, ladies and gentlemen, yes. Did  
4 Palmer Luckey fail to comply? Yes.

5 Do you find that Oculus is a party to the  
6 nondisclosure agreement? Yes.

7 officers, directors, employees. Luckey was Oculus.  
8 Did Oculus fail to comply with the nondisclosure  
9 agreement? Yes.

10 Let's talk about the damages under breach of  
11 contract.

12 If we could go --

13 Unjust enrichment. These are the options that  
14 Mr. Jackson told us about. What's the value? Everything is  
15 built on this technology that was transferred under this NDA,  
16 and this contract was breached.

17 \$2 billion, 1.5 billion, 1.33.

18 Ladies and gentlemen, under the question 26 and 27,  
19 for Mr. Luckey, unjustly enriched by \$206 million.

20 Oculus, unjustly enriched by \$2 billion, the basis of  
21 their very business.

22 Now, let's talk a little bit about tortious  
23 interference, Facebook tortious interference.

24 What does that mean? The contract we're talking  
25 about here is the NDA, and we're talking about Facebook, who

1 knew about the NDA and didn't care and knew that if it was  
2 going to do something like buy Oculus, that NDA would keep  
3 being breached and would be breached again.

4 That's what it means. Tortious interference with the  
5 contract. This is from the jury charge.

6 The Defendants' intentional making of a contract with  
7 a party and proceeding to carry out that contract -- and that's  
8 the sale, the purchase of Oculus -- knowing that performance of  
9 that contract would be contrary and in violation of a contract  
10 with the Plaintiffs.

11 A lot of Plaintiffs and Defendants. We will break it  
12 down.

13 Facebook knows there is an NDA, and if it buys  
14 Oculus, that technology would be transferred again under that  
15 NDA through a breach. That's tortious interference.

16 How do we know that Facebook knew? April 10th  
17 letter. April 10th. After the deal was announced but before  
18 the deal was closed, we wrote a letter to Facebook.

19 And it was polite, but it attached the letter to  
20 Oculus.

21 And the letter to Oculus that was attached  
22 underneath, it clearly told about the NDA, told the whole  
23 story. It was about three, four pages long. Facebook knew.  
24 And Mr. Zuckerberg may not have ever heard about it, but his  
25 lawyers sure did.

1 Diligence in a weekend? \$3 billion deal in a  
2 weekend.

3 They never found the NDA? We told them about it in a  
4 letter before they closed. Never found the NDA. That is how  
5 they knew, and that's how they knew they tortiously would  
6 interfere with our contract.

7 Did Facebook do it? Yes. The evidence shows that.  
8 Damages for tortious interference. Again,  
9 Mr. Jackson.

10 You don't have to add all these up, but use your  
11 judgment.

12 We say \$2 billion.

13 Unfair competition. What's that? It's what it  
14 sounds like, unfair competition. Is it fair? Can you do  
15 business like this? You're supposed to compete on a level  
16 playing field. You know what? You want to go into business,  
17 go into business. Let's compete. You put out a better product  
18 than mine, you get the sales. I put out a better product than  
19 yours, I'll get the sales. We will do it on the up and up, but  
20 if you don't do it fairly, it interferes with your business.

21 In addition to everything else you've already heard,  
22 what are the elements -- what are the facts that we know how  
23 Oculus and Facebook competed unfairly?

24 Mr. Carmack's employment agreement, that's an  
25 employment agreement with Oculus that the Defendant,

1 Mr. Carmack, broke. He breached that employment agreement. He  
2 doesn't want to call it a breach.

3 He want to call -- Luckey wants to call stealing a  
4 transgression. He wants to call breaching his contract I  
5 failed to comply.

6 But it's a breach. It's not fair.

7 How about stealing things? id Tech 5 game engine  
8 code. This, a laptop that I deposited Mr. Carmack after -- a  
9 year after this litigation was pending, and I asked him for 25  
10 minutes, can you tell me about all of your computers so we can  
11 find the evidence.

12 Didn't remember it.

13 And then a month later, oh, I found a laptop in my  
14 closet, and it happens to have millions of lines of id and  
15 ZeniMax code on it that has never been publicly released, that  
16 has never been licensed outside of the id ZeniMax family.

17 And Ms. Frederiksen-Cross never talked about it.  
18 None of their experts did.

19 They stole it.

20 How about the breach of the nonsolicit? We know  
21 that.

22 Mr. Carmack. Now, Ms. Kennickell has many reasons to  
23 do what she wanted to do, but let's focus on Mr. Carmack for a  
24 second. When Mr. Iribe says can you give me the name of top  
25 coders that I want to recruit. What does Mr. Carmack do?

1 Serves them up on a silver platter and then says I didn't do  
2 anything. It's not solicitation.

3 That interfered with our business. How did it  
4 interfere with our business? That's one of the elements of  
5 unfair competition. Let's take a look.

6 Five of your top coders leave on the same day. They  
7 sign their resignations. They put them in on the same day.

8 What happens? It harms the studio. It's very  
9 damaging. These are talented people. They are hard to  
10 recruit. Got to get a game out. It's a working environment.  
11 It interferes. Unfair competition.

12 Ladies and gentlemen, yes, yes to unfair competition.

13 And, remember, I would like to remind you that unfair  
14 competition is not just for tortious interference -- not just  
15 for the nonsolicitation or the breach of the contract.

16 It's a lot of things you can consider as unfair  
17 competition, all the evidence we've already been through that  
18 I'm not repeating for each cause of action. There you have  
19 your choice of damages. We suggest \$2 billion.

20 Let's talk about conversion very briefly. Conversion  
21 is another claim, and that just means you took something and we  
22 want it back. You took something, and we want it back.

23 USB drive, right. That's here. But there is also  
24 code.

25 Next one, please.

1 Millions of lines of code. Want it back. Rage code.  
2 That's conversion.

3 Carmack has refused to return that property. I  
4 failed to do so.

5 We want it back.

6 Let's talk about trademark for a minute the. I won't  
7 go through this in great detail. The jury charge, the parties  
8 do not dispute that ZeniMax owned legally protectable  
9 trademarks.

10 what is the point of the trademark claim? The point  
11 of the trademark claim is that -- it's like my example of when  
12 I stand in front of something, a big sign that says Coca-Cola  
13 and I'm selling Tony's Cola. You might look at that and you  
14 might think I guess he's sort of in business with Coca-Cola  
15 somehow and I might be confused if that's a new type of soda  
16 from Coke.

17 what did we say before the Kickstarter? It's very  
18 important that you not use anything that can be construed as  
19 ZeniMax property.

20 what happened? We still used it in the video because  
21 it strengthened the video.

22 There's -- there's him. Now, you watch this video,  
23 and it is Doom all over the place, footage of game play, and  
24 then what's the excuse the Defendants say? Well, you know, we  
25 got it off the internet. That means it's free.



1           And then there was a slide when we were going  
2 through -- there was a slide when we were going through that  
3 testimony, and it had a picture of YouTube and there was a big  
4 checkmark, and it said public.

5           We know that's not how it works. You can't just grab  
6 something off the internet and use it in your business. You're  
7 not teaching a class, you're not in a library, you're not using  
8 it for educational purposes, you're not at home. That's fair.  
9 You're using it to raise money in your business.

10           How else?

11           The slide decks, the investor presentations, all  
12 over.

13           Let's talk about -- one more thing. This is a slide  
14 deck that Mr. Iribe sent, numerous high-profile game companies  
15 onboard, id/Bethesda. Then there's a comma. Then it says even  
16 the big publishers, Activision, have approached us.

17           He's telling people that we're on board. We had no  
18 arrangement relationship. The deal fell through by March 2013.

19           Let's talk about exemplary damages as we get close.  
20 Exemplary damages are damages to punish and deter. And you  
21 have that power. The Court gives you that power based upon all  
22 the information that you've seen, all the evidence that you've  
23 seen in this case. If you find malice, fraud, gross  
24 negligence.

25           Let's take a look at some of the examples. We have

1       been through so much of this.

2               The destruction of evidence after the lawsuit began.  
3       That's not how companies are supposed to act.

4               The theft of 10,000 files and code.

5               Misrepresentations by attorneys to the court expert  
6       as to what the evidence was.

7               For example, Mr. Cooper's laptop, files were deleted  
8       three minutes before it was imaged, and Mr. Cooper -- Mr. Rosen  
9       was given that image for the lawyers for Facebook and Oculus  
10      and was told that that is a bit-for-bit image, and Mr. Rosen  
11      said no, it's not. I have to start with the first one of the  
12      first zero and end with the last one and the last zero.

13              That's not how companies are supposed to act,  
14      reputable companies.

15              Computers missing, management sanctioned, copyright  
16      infringement, ripping.

17              It's important.

18              Again, it's not a Blu-Ray that you're going to watch  
19      at home. It is a VR demo. And then you ask your boss, I don't  
20      know where you stand on the ripping approach, and your boss at  
21      Oculus says do whatever it takes to get the best result.

22              And then what do we find? we find those movies  
23      ripped illegally on hard drives, shared drives inside the whole  
24      company. Everybody using it.

25              Management sanctioned -- I'm sorry. I just went

1 through that.

2 \$3 billion deal over a weekend. \$3 billion deal over  
3 a weekend. Do you think that shows -- that's gross negligence,  
4 I would say to you.

5 And I will show you that, and we're going to talk  
6 about it in just a second.

7 Let's talk about Mr. Carmack's false affidavits as  
8 other reasons to find damages to punish and deter.

9 An affidavit.

10 "I did not induce or attempt to induce any of the  
11 employees to quit their employment with id Software."

12 That's signed under oath. That's an affidavit.

13 So the id 5, the friends just showed up one day, and  
14 nobody ever talked about, and you just go to work one day and  
15 five of your friends show up and, okay, we want to work for  
16 you. That's not believable.

17 How about deleting files? Mr. Rosen said these files  
18 had been deleted, these system logs files, and here is a  
19 declaration, again, a declaration from John Carmack. "I have  
20 never wiped the hard drive of my Oculus MacBook, nor did I wipe  
21 any files from the MacBook hard drive before I provided it for  
22 imaging."

23 There is an example of exemplary damages, these  
24 damages to punish and deter, and it's on page 78, but I will go  
25 through it with you.

1           It's gross negligence. It means the act or omission  
2 by Defendants that has an extreme degree of risk, right?  
3 Defendants have actual subjective awareness of the risk but --  
4 actual subjective awareness of the risk but nevertheless  
5 proceed with conscience indifference.

6           So let's think about that for a minute, and let's  
7 think about Facebook.

8           Awareness of an extreme degree of risk, nevertheless  
9 proceed.

10          Are we going to buy Oculus?

11          Mr. Amin Zoufonoun, Mark Zuckerberg's right-hand man,  
12 who is running the deal is texting him on that weekend of doing  
13 it -- I think it began on a Friday.

14          And he says, "wow, I think Oculus misrepresented some  
15 things to us. There are things that Oculus told us that simply  
16 aren't true."

17          We send Mr. Carmack. Mr. Carmack actually warns  
18 ZeniMax -- warns them that ZeniMax will sue him for his work on  
19 VR. Mr. Carmack puts Facebook on notice.

20          After all those warning signs, Facebook doesn't care.  
21 What is it? It's an awareness of risk, nevertheless proceed  
22 with a conscious indifference. That is gross negligence.

23          What do they do? There is more warning signs. Let's  
24 go back for a second. There is more warnings.

25          We wrote to them on April 10th, after they announced

1 the deal, we being ZeniMax and id. We said stop, don't do  
2 this. You are buying stolen goods. We wrote to Oculus. We're  
3 going to sue them because they stole our stuff.

4 Facebook wanted it really badly. They didn't care.  
5 And they had an exit. They had an exit. They had two of them.  
6 The first one is you don't have to make the deal with diligence  
7 in a weekend.

8 The second one was, even after you announced the  
9 deal, the deal says you could walk away if the warranties made  
10 to you by Oculus are not true.

11 But they didn't. They kept going, and they closed  
12 anyway. And they bought this lawsuit. Mr. Zuckerberg and  
13 people at Facebook are upset that they are in this courtroom.

14 We heard Mark Zuckerberg say it is really important  
15 to make sure the foundation that you're building upon is  
16 something that you own.

17 Do we really think that in three days Facebook really  
18 figured out what it was buying? It didn't care to figure it  
19 out. It didn't want to figure out.

20 Malice. Fraud. Let's take some more examples.

21 Brendan Iribe. Really bad to send long emails on  
22 legal matters.

23 Email is permanent and can be used in court.

24 This is a CEO of a company saying that email is  
25 permanent.

1 And I believe the explanation was, well, I had some  
2 legal things. So you can have talks with your lawyers. So  
3 what if the talks to your lawyers stay permanent. That's okay.  
4 They can stay privileged. But they don't have to be erased.  
5 It's like they can be used against you in court.

6 Is this how honest businesses operate? Is this how  
7 honest people and executives operate?

8 Next. "We need to sync up before your depo."  
9 Mr. Zuckerberg's deposition. I took it. The night before,  
10 text message, "We need to sync up." To get the story straight.

11 wiping. Completely wiped. Andrew Rosen, expert.

12 He says, in fact, before you wipe a computer, there's  
13 a couple of "are you sures" like when you're about to send a  
14 reply to all. Are you sure you want to do this? Are you sure  
15 you want to do this? Yeah. He's sure he wanted to do it.

16 Never wiped a Mac.

17 Correct. To this day I never wiped a Mac. Those are  
18 lies.

19 Let's talk about Mr. Rosen for just a second. File  
20 deletions immediately prior to imaging.

21 wiping is a volitional act. We talked about that.

22 He had concerns regarding the integrity of the image.  
23 was this evidence tampered with?

24 Inaccurate submissions to the Court. Inaccurate  
25 submissions to the Court.

1           Under an obligation to preserve anything that is  
2 deleted when you're under an obligation to preserve is a very  
3 bad thing to do.

4           And you don't need to be a lawyer to understand that.

5           How about this? I will probably burn in hell for  
6 this. This is the money that is coming out of all this, you  
7 know. It is going to come out soon that the deal was actually  
8 4 billion to me, meaning I calculated my cut off of a higher  
9 price so I could give myself more. It's Mr. Iribe talking to  
10 his friends on a text message, which he thinks can't be used in  
11 court, apparently.

12           Mr. Iribe, \$427 million. Mr. Luckey, \$200 million.  
13 Mr. Carmack, \$100 million. Facebook Oculus, \$2 billion.

14           Ladies and gentlemen, exemplary damages? Yes, you  
15 should find exemplary damages against each and every one of  
16 these Defendants.

17           It's wrong. It's wrong to do those things.

18           Take a look at the verdict form. You're allowed to  
19 award up to two times the amount you award in compensatory  
20 damages. You are allowed to consider the net worth of the  
21 Defendants when you decide what is fair to punish and deter  
22 this type of behavior. Facebook is a \$350 billion company.

23           The standard is conduct that offends a public sense  
24 of justice. It does. It certainly does.

25           Now, you may hear -- I will talk to you again in just

1 a little bit, but you may hear from Defendants.

2 Public concept. We talked about the board that had  
3 public on it. Have you heard of gravity? Yes, that concept is  
4 public. Have you heard of a prism in the lens? Yeah, it's  
5 public. Everybody knows that, right?

6 We did it better. We did it differently. We didn't  
7 use anything. We sent you our SDK. As if that proves that the  
8 SDK wasn't made using John Carmack's help, id's help and our  
9 code. Why go back to the well?

10 ZeniMax had no vision. Vision? Isn't a person with  
11 vision the ones who -- the one who develops it and then debuts  
12 it to the world before everybody thinks it can even be done?  
13 Those are the people with vision.

14 ZeniMax never said we owned it. Of course we did.  
15 Of course we said it. We had an NDA. We had negotiations with  
16 an offer that said NDA and here's the work we've done right on  
17 the front. Here's how much we want.

18 When you hear from Defendants, ask yourself: If  
19 making a VR engine is easy, why didn't everyone else do it  
20 before E3? Where would Oculus be today without Mr. Carmack,  
21 without our technology provided under the NDA? If they could  
22 make it, why did they take it? Why the destruction of evidence  
23 after getting notice of this lawsuit? Why the wiping of  
24 computers? Why the lies?

25 In her -- in the opening Plaintiffs showed a proverb,



1 "where there is no vision, the people perish." The proverb  
2 continues. "But he that keepeth the law, happy is he." Today,  
3 ladies and gentlemen, that is you. There is a difference  
4 between right and wrong. Let's make it right.

5 I will be back to you in a bit. Thank you.

6 THE COURT: Do you need a break before you start?

7 MS. WILKINSON: whatever you think is best, Your  
8 Honor.

9 THE COURT: Do y'all need a break? No? Yes?  
10 Okay. Short break. Okay. We will take a short  
11 break.

12 SECURITY OFFICER: All rise.

13 THE COURT: Don't talk about the case.  
14 About five or ten minutes at the most.

15 (Jury out)

16 (Recess at 2:56)

17 THE COURT: Okay. Here we go.  
18 David, are they ready?

19 SECURITY OFFICER: Yes, sir.

20 (Pause)

21 SECURITY OFFICER: All rise for the jury.  
22 (Jury in)

23 THE COURT: Y'all be seated.  
24 Thanks.

25 Ms. wilkinson.

1 MS. WILKINSON: Thank you, Your Honor.

2 CLOSING STATEMENT

3 BY MS. WILKINSON:

4 Good afternoon, everyone. It is a little after 3:00  
5 on a Thursday afternoon, and you have been here for three  
6 weeks.

7 And I join Mr. Sammi telling you how grateful we are  
8 for your service because the only time that you get to talk  
9 during this process, even though you are in the end the most  
10 important people, because you have our fate in your hands, is  
11 when we did the jury selection.

12 And many of you told us that you were sacrificing  
13 your work. You had family emergencies, you owned small  
14 businesses, you have family responsibilities, and you  
15 sacrificed all of those things, those important things to sit  
16 here and listen to us try and tell you about the case, try and  
17 show you the evidence that you are going to need.

18 So the great thing about our justice system is that  
19 in the end, at the end of any trial, a big trial like this or a  
20 small trial, after all the evidence is done, folks like you,  
21 regular folks who work every day, apply their common sense, get  
22 to take this evidence and the law His Honor gives you and make  
23 your decision.

24 why is that so important to us? Because we have been  
25 waiting for three years.

1           These people dragged us into court, and they are  
2           right, we don't want to be here. I like my job, but these  
3           folks are real people, and you heard what they've done. They  
4           have given their blood, sweat, and tears to this business.

5           Mr. Carmack apparently gives his blood, sweat, and  
6           tears to everything. Mr. Luckey is passionate about what he  
7           does. What other nine-year-old reads Nuts & Volts? My kids  
8           don't read Nuts & Volts.

9           He was pursuing what he loved.

10          Mr. Iribe dropped out of college. He started three  
11          businesses. He was a programmer. He and Nate and the others  
12          specialized in SDKs.

13          These are real people who worked hard, doing what  
14          they love, what they cared about, and, yes, they have become  
15          incredibly successful. And they should be.

16          Who wouldn't want to change places with them? Who  
17          would want to do what you love and be successful? Some of us  
18          do what we love and we're successful, and maybe we don't make  
19          that kind of money, and that's great.

20          But here, this country, what we really reward is you  
21          build something, you persevere, you invest your own money, you  
22          work day and night, and you build something for the rest of us,  
23          and you're successful, and you're rewarded. That's what is  
24          supposed to happen.

25          And there is competition out there, and there's other

1 people who want to be in business, but most of the time it's  
2 the people who work the hardest and the longest and are the  
3 most persistent. They're who prevail. And that's what  
4 happened in this case.

5 And you know what? They're really mad about it.  
6 They're jealous, they're angry, and they're embarrassed,  
7 because they had the opportunity to get in on this. They had  
8 an opportunity to be a part of it.

9 There are documents we're going to look at. You've  
10 seen everything. You heard the witnesses. This was supposed  
11 to be a partnership.

12 They thought we were clowns. They mocked us in  
13 the emails. They come into the courtroom and do the same  
14 thing. They still bullied.

15 How many times did you hear snapping, yelling at our  
16 witnesses and one of the lawyers mocking Mr. Palmer Luckey  
17 because he doesn't have a college degree?

18 well, first of all, I felt like a chump. I went to  
19 college, because I'm certainly not as successful as they are.  
20 But so what that they didn't go to college? So what that  
21 Mr. Luckey doesn't have the formal fancy training that  
22 Mr. Altman does?

23 He found what he loved, and he was great at it, and  
24 he's brilliant, and he doesn't deserve to come into this  
25 courtroom and have these people mock him and belittle him just

1 like they did outside the courtroom, they did exactly the same  
2 thing in this courtroom.

3 They haven't changed their stripes at all. You saw  
4 with Mr. Altman when he took the stand. 16 times the Judge had  
5 to order him to answer my questions. How many do you think he  
6 had to be ordered to answer when Mr. Sammi asked him? Zero.

7 He thinks he can talk down to me, talk down to the  
8 rest of my clients, mock us, make fun of us?

9 The great thing, as I said, about our justice system  
10 is that time is done. You get to deliver justice, and you get  
11 to tell them that taking us, dragging these people through the  
12 mud for three years, trying to tarnish their reputation, tell  
13 some fanciful tale that they stole things, that those people  
14 that came from around the world that love virtual reality, the  
15 nerds who love to write code, who like to build a sensor from  
16 scratch.

17 Those folks came in and talked to you. They didn't  
18 steal their technology. They got together because they love  
19 it. They wanted to make their own technology. They're proud  
20 of what they do.

21 So I'm going to ask you at the end of this, tell them  
22 that's enough after three years because it doesn't matter what  
23 little story they tell, it matters what the evidence was, what  
24 you saw on the screen, what you saw on the ELMO, and the  
25 evidence that you heard from the witnesses.

1 And that's all in this courtroom anyone gets to use  
2 to decide what happened. Not an attorney argument, not  
3 berating a witness over and over and over again, trying to get  
4 the answer you want when they refuse to do it.

5 It's what was the evidence? What did the documents  
6 show? What did the people say? And as I told you at the very  
7 beginning, it's amazing in this case. There is so much  
8 evidence that was created at the time, not after the fact, not  
9 coming in and making up some story about why you didn't invest  
10 and why you called the purchase by Facebook insane.

11 We know what they thought. You looked at it  
12 yourself. You saw the opportunities that they had, and you met  
13 the people.

14 So let's turn to the claims and the evidence that's  
15 very important to my clients because this was their final  
16 chance to show you what really happened.

17 And it really all started because these people have  
18 one thing in common. They do have a vision. They did have a  
19 vision, and they still have it.

20 Have they solved every problem? Have they been  
21 successful in everything? No. No.

22 By most of our standards they have been pretty darn  
23 successful. But, guess what? Other than being in here with us  
24 every day dressed like this, which has got to be the first and  
25 the longest they have all ever been in suits and ties or even

1 in closed shoes, honestly.

2 You know, they are at work every day. They're at  
3 Oculus. They're working for Facebook. They didn't say, oh, I  
4 got my money, you know, I'm going to go lay on the beach.  
5 These people want to bring this technology to life because they  
6 believe it's more than just a game. They believe it is more  
7 than putting on some goggles. They believe, like  
8 Mr. Zuckerberg told you, that this is a technology of the  
9 future.

10 And you know what? They might be wrong. \$5 billion  
11 in investment. It's a risk. Some people don't want to take  
12 it.

13 Mr. Zuckerberg might be wrong. But you know what?  
14 He's willing to give it a try, just like he did when he was  
15 19 years old and he dropped out of Harvard and built his  
16 business. These guys were willing to risk what they had or  
17 what they didn't have and try to make this technology a  
18 reality. And they're still at it.

19 Don't let these people stop them from doing what  
20 they're still trying to do. They're still going to work every  
21 day. They're still writing code. In fact, you probably saw  
22 Mr. Carmack. He is over there using my cards writing new code,  
23 because this is not his environment.

24 He doesn't want to be here, because this is what he  
25 wants to do. This is what they all believed in. This is what

1 brought them all together.

2 And this is the guy with his team who was willing to  
3 invest in the people. He believed in the people.

4 And you heard ZeniMax didn't believe in the people.  
5 of course, they thought Mr. Carmack was a genius. Okay. Every  
6 single person has said Mr. Carmack is a genius. His Honor can  
7 take judicial notice of that.

8 But that's not really the point. The point is who  
9 was willing to say this was the right team, these were the  
10 people who could do it? And that's what Mr. Zuckerberg and  
11 Facebook saw. They saw the future.

12 They didn't say, oh, look at this SDK or the VR  
13 testbed that ZeniMax wrote. It wasn't even compatible with the  
14 headset.

15 what they saw was what these guys could do in the  
16 future. And so they invested, in great contrast to Mr. Altman,  
17 who for his own reasons -- and he is entitled to them -- has  
18 pursued a narrow strategy of making the best AAA games.

19 And as I said in the opening, there is nothing wrong  
20 with that. But that doesn't mean that you get to say that  
21 somebody else's technology is yours, especially when you had  
22 the opportunity over and over again to make that investment.

23 And we know what he thought. Not only did he answer  
24 questions eventually on the witness stand, he wrote in 2013,  
25 remember? This is a couple of months before Facebook announces



1 the deal. They announce the deal in December 2014. And what  
2 does he say?

3 He's so angry at Mr. Carmack for leaving, even though  
4 his contract was over, he didn't own the guy forever, four  
5 years after buying his company, he let him go by not renewing  
6 in 60 days. He is so mad at him and so bitter because he knows  
7 that people, like Gloria, who you met yesterday, loved working  
8 for Mr. Carmack and loved working with Mr. Carmack.

9 So what does he say? He sends around a snarky fan  
10 comment. And why does he like it? He likes it because it  
11 justifies what he did. He said that he believes in loyalty.  
12 Well, we know Mr. Altman believes in that.

13 He said, "He could have focused," meaning John, "on  
14 making id better instead of leaving to focus on still unproven  
15 technology. Look at previous attempts at virtual reality, and  
16 you'll see it has failed again and again."

17 And he writes, "Exactly."

18 He didn't think these guys could do it. He didn't  
19 think that technology that he made supposedly was so great, or  
20 he would have hired all these people himself.

21 You saw Nirav Patel. Why couldn't he have found him?  
22 That gentleman was putting his sensor data and code out on  
23 Meant to Be Seen.

24 Professor Steve LaValle wrote a free book. Remember?  
25 He said he put it on the internet in his spare time after being

1 a computer professor.

2 If they wanted to find these folks, they were right  
3 there in front of them. They didn't want to. They didn't want  
4 to do it because they thought it wasn't worth it. It wasn't  
5 going to succeed.

6 And they certainly weren't willing to spend the money  
7 that it's taking to try to make this technology successful.  
8 Their own expert said -- I asked him, "Is there any evidence  
9 that these Plaintiffs" -- these ZeniMax -- "would have ever  
10 been willing to spend \$3 billion on developing virtual reality  
11 technology?"

12 And he said, "I haven't seen any."

13 There is nothing in their books. There's nothing in  
14 the documents that suggests that they were committed or would  
15 ever have been committed to do what it takes.

16 The Plaintiffs have brought us into court, and when  
17 you bring someone to court, you have to prove your case. And  
18 what the law says is, you don't get to say it's 50/50. You  
19 don't get up and say, well, we have this fancy guy from  
20 Princeton, and you have this really smart woman who is a  
21 computer coding expert, hum, they both said it, they both say  
22 different things, call it a tie. No.

23 The tie goes to the Defendant in our system. Unless  
24 you prove your case, if it looks like, um, I can't decide  
25 between the experts, the Defendant wins. And that's true for

1 everyone, whether you're rich or you're poor, because you don't  
2 get to drag people into court unless you can actually prove it.

3 So Plaintiffs have to tip that scale. They don't get  
4 to just say we presented one expert and you presented the  
5 other. And they certainly don't get to say, oh, we had a  
6 damages expert and you didn't. Guess what? We don't think  
7 there is any damages. And we certainly are not going to prove  
8 their case for them. We don't have to do that.

9 The law says we don't have any burden. You want to  
10 prove your case, you bring your evidence and you guys decide  
11 whether that's enough evidence.

12 But what did Plaintiffs focus on? You spent two  
13 weeks of this three-week trial before they virtually said the  
14 words "trade secrets" or explained what they were. I put that  
15 chart up in front of Mr. Carmack after they called him as a  
16 witness to start talking about them.

17 What did they focus on? They focused on Gloria's  
18 resignation. Why did we bring her in here? Not because we  
19 wanted to. She is not central to this case. But because they  
20 were smearing her and the other people that left with her and  
21 suggesting they were going because they were taking VR  
22 technology.

23 And then D-day comes, judgment day comes, Gloria gets  
24 on the witness stand and did they ask her whether she did VR  
25 work? They didn't everyone have the guts to confront her. You

1 know why? Because she didn't do any VR work, as she said.  
2 They didn't have one piece of paper. They didn't have anything  
3 to show that she actually did VR work.

4 what they heard was she didn't like working there.  
5 They didn't treat her colleagues well. She wasn't getting to  
6 do the interesting work that she liked to do with the people  
7 that she loved, her family. That's why she left.

8 But they made us drag her in here because they said  
9 she was key, the id 5. They showed you the silly video, that  
10 supposedly this was Mr. Hooper or Mr. Cooper was coming in  
11 after he left and this was going to show that John somehow gave  
12 him something improper.

13 There's no evidence of that. They didn't show you  
14 anything. They want to argue isn't this suspicious, we will  
15 pull out one clip and that will mean that you can jump to  
16 conclusions that they weren't just talking as Mr. Carmack said.  
17 The only evidence is they were talking about his work. And you  
18 can somehow leap to the conclusion that Mr. Carmack did  
19 something wrong.

20 And then, my favorite, the box, the great box. The  
21 box is gone now, so I can't use it, I'm sure. But it was out  
22 here as you saw during theirs. First it was that long little  
23 box. What came in the box? Who saw what was in the box? Is  
24 the box really anything?

25 Mr. Luckey got on the stand, oops wrong box. Well,

1 we will bring you the right box. What was the box about? It  
2 was about making fun of what Mr. Luckey did. It was saying,  
3 you just put some cheap goggles in a box. You didn't even have  
4 a strap. And you didn't make anything. Your contributions  
5 were worthless, Mr. Luckey.

6 what Mr. Luckey did was something that nobody had  
7 done in 40 years. Maybe it looks obvious now to all these  
8 geniuses but guess what? It wasn't. Nobody else --  
9 Mr. Carmack told you nobody else had figured out how to put the  
10 right lenses in and the right panel and make it cheap and  
11 lightweight and actually viable, commercially viable. He's the  
12 one who did it.

13 And Plaintiffs used some analogy, my favorite of all  
14 these little sayings they had, remember, if you steal my bike  
15 and you put a bell and you put a basket on my bike and I say  
16 it's my bike, you stole my bike.

17 Mr. Luckey sent the headset. Mr. Carmack slapped the  
18 sensor/bell on it and put the strap on it. It was Mr. Luckey's  
19 headset. And the only people who know -- the only people who  
20 were there at the time that know are Mr. Carmack and  
21 Mr. Luckey.

22 Mr. Altman has no idea. He doesn't have the  
23 technical expertise. He certainly wasn't down here in Dallas  
24 and he couldn't have cared less back then.

25 At the time everybody said the same thing. That was

1 Palmer Luckey's invention. Did it get better thanks to  
2 Mr. Carmack? Of course it did. And guess what? It got better  
3 after Mr. Carmack had nothing to do with it for a while when  
4 Oculus was formed. And it got better again. And hopefully it  
5 will continue to improve.

6 But Mr. Luckey made a real contribution. Mr. Carmack  
7 was great for him and great for Oculus, but he was also great  
8 for ZeniMax.

9 At E3 the only reason ZeniMax got real attention for  
10 their Doom 3 BFG demo was because of the headset, so they all  
11 got a benefit, all of them.

12 Plaintiffs then said, well, Mr. Carmack, even though  
13 he's a great guy and a genius, he's a criminal. He's a guy --  
14 I think they keep calling the court-appointed independent  
15 expert a criminal crime -- computer crime guy to make it sound  
16 like there is a crime.

17 Here is what Mr. Rosen said. He said, "I agree that  
18 the entire hard drive has not been wiped."

19 Now, why does that matter? Because if Mr. Carmack  
20 was trying to cover up what he did years after this technology  
21 is already out on the market, why would he only wipe part of  
22 it? And why would he turn the USB drive back in to these guys?  
23 If you wanted to commit a crime, if you wanted to erase all the  
24 evidence, why would you find the USB drive a year later or so  
25 and hand it over to the other guys with all the files still on

1 it, to show exactly what you did?

2 He handed them the evidence that they now claim, oh,  
3 look, this shows he stole the files. Yes, he copied the files.  
4 He shouldn't have done it. He shouldn't have copied personal  
5 emails. He shouldn't have copied professional. But this  
6 company had been his life for 20 years. And he got up on the  
7 stand and he took his licks over and over again with Mr. Sammi  
8 and he said, I did it. But I didn't use it, and it wasn't part  
9 of the Oculus technology. And everybody said that.

10 Mr. Rosen said, "We don't see any evidence of  
11 third-party wiping," which is what these guys were alleging and  
12 there was nothing suspicious about MacBook, because they have  
13 that normal function that erases automatically.

14 That's Mr. Rosen. No, not at all. No, sir.

15 They put up these magnets over and over and over  
16 again. They didn't prove that any of this was given to Oculus.  
17 They called these Oculus computers because Mr. Carmack said he  
18 did work on them for Oculus.

19 were they used at Oculus? No.

20 Are they in any Oculus products? No.

21 The case is really about one fundamental issue. We  
22 call it trade secrets, we call it copyright, but the truth  
23 is -- the question comes down to: Did we copy their code?  
24 That is really what it's all about, because if we didn't copy  
25 their code, none of the rest of this matters.

1           And that's really what Plaintiffs have been trying to  
2     say for three weeks. You copied our code. And after all the  
3     witnesses are said and done, the only people who would really  
4     know the answer to that are the people who wrote the code and  
5     the people who understand how to look at the code.

6           They did not present one person who wasn't a paid  
7     expert who could tell you anything about the code. That should  
8     tell you how much they prioritize virtual reality. They say,  
9     oh, Mr. Carmack left and you stole the id 5. There are plenty  
10    of people out there if they wanted to make the investment.  
11    They could have hired them before Mr. Carmack left, after E3,  
12    when they thought, oh, this was such a great thing, they could  
13    have hired them after Mr. Carmack left. They didn't think it  
14    was worth it. They didn't care.

15           And they didn't prove that they had any secrets.  
16    They didn't show you exactly what they were. And they  
17    certainly didn't show you how we used them.

18           The jury instructions that you're going to get -- and  
19    I wanted to do one thing for you because I was trying to think  
20    what could I do to help you as I was listening to His Honor  
21    read to you that 90-page jury charge, and I will tell you even  
22    as a lawyer, it's pretty daunting so don't feel badly. It is  
23    really confusing.

24           But so I was trying to -- what's the easiest way just  
25    to have some organization? You obviously don't -- do whatever



1 you like. One thing I thought is there's lots of instructions  
2 in there, but if you want to keep track of all these different  
3 claims, at least you could know what page each of the claims  
4 where the verdict form is. So you heard a lot about trade  
5 secrets. If you go to page 35, that's where that question  
6 starts.

7 If you answer no, that nobody copied any trade  
8 secrets, you don't have to answer any more questions and you  
9 can go to copyright -- excuse me, this is page 18. I'm sorry.

10 Page 18. And copyright is on page 35.

11 The breach of the NDA is on page 45. And the  
12 tortious interference is on page 51.

13 So while that looks daunting, the questions all go  
14 with each of the claim. And in each case the first question  
15 is: Did they prove that any of our clients -- and you will see  
16 the specific names -- actually did any of these things?

17 So let's take a look at the rest of the proof.

18 John didn't keep any secrets from Mr. Altman when he  
19 worked there. He knew that he was exchanging information. He  
20 knew he was working with Oculus. John wrote him an email and  
21 said, I need your official guidance, and here's my  
22 recommendation. I think we should finish Doom 3 BFG for VR and  
23 take that technical advisory position, which is the one working  
24 with Oculus, and we should lead.

25 They knew exactly what he was doing and they knew

1 what he recommended. And you know what? He said we should  
2 lead and they rejected it.

3 They didn't want to spend the time and the money that  
4 you see here that Facebook and Oculus had to to start getting  
5 this technology so that it is consumer -- it is viable in the  
6 consumer market.

7 It started, as we said, with Mr. Luckey's passion.  
8 His first prototype, which you saw, his prototype at Sundance,  
9 and then the prototype that he sent to Mr. Carmack.

10 That was the breakthrough. That was different. Look  
11 at all these other pictures of all the different VR devices.  
12 None of them look like that. Again, this looks relatively  
13 simple, but nobody, not all the guys who were fancy scientists  
14 in the areas of optics -- Nintendo, Sony, not anybody, not  
15 these huge corporations -- had come up with this idea until  
16 Mr. Luckey did.

17 And what was ZeniMax's response? You don't have to  
18 guess. They wrote it down at the time. Before they ever  
19 thought about suing -- I would say that's the evidence you want  
20 to know. People can say anything after the lawsuit --  
21 right? -- and justify it and try to make their story tailored  
22 it to. The question is: what did they say when they thought  
23 nobody was looking?

24 They said, VR, we don't want you to put any further  
25 effort toward this, because they didn't have an arrangement

1 with Oculus. "Your energies are best spent on Doom 4," the  
2 game. That was their business model. That is what they wanted  
3 these guys to do, and they wanted Carmack and his team to get  
4 back to work on what they thought was their vision and their  
5 priority, getting Doom 4 out.

6 All of these folks that did the work for us, that  
7 worked for Mr. Altman and worked with Mr. Carmack and worked  
8 for Mr. Iribe, they all came in. We brought in the people that  
9 did the work from Mr. Zuckerberg, obviously Mr. Luckey and  
10 Mr. Carmack, Mr. Patel, Gloria, and Steve. They came in  
11 themselves, in addition to the depositions, and allowed these  
12 folks to confront them and explain to you what work they had  
13 really done.

14 Plaintiffs didn't see any value in that. Plaintiffs  
15 at the same time all these guys are working hard, are calling  
16 VR and the Oculus Rift stupid.

17 They called Mr. Willits, who came in at the last  
18 minute, remember him, he came in for like 15 minutes, he still  
19 works for ZeniMax, he said, "I think the whole Oculus thing is  
20 silly," he says in 2013.

21 Mr. Andonov says -- again, before they sued, before  
22 anyone was looking -- "This is a silly distraction and have you  
23 ever considered that these clowns may fail? Do you want to be  
24 associated with that? Focus on Doom 4."

25 If you thought you had great technology, like

1 Mr. Iribe did and Mr. Luckey and Mr. Zuckerberg, would you  
2 write down that you think they're going to fail and you  
3 consider the people, the people that Facebook invested in, as  
4 clowns and get back to your job, Doom 4?

5 We know what they thought, ladies and gentlemen.  
6 They didn't think anything of this technology.

7 January 29, 2013, that's a year before Facebook  
8 announces the purchase.

9 There's a reason that after this they don't come  
10 knocking on Oculus's door even though this is out in the  
11 marketplace three months later. They don't come and say, hey,  
12 that's our technology. That's our bike. They don't say a  
13 word, because they don't think it is, and they think the whole  
14 thing is going to fail.

15 As I said, they make fun of these guys in the  
16 courtroom and they were making fun of them outside the  
17 courtroom.

18 Now, some of their folks at least were honest about  
19 what benefits they got. This is Mr. Hines, one of the many  
20 people Plaintiffs didn't bring. And you should remember that,  
21 because they have the burden of proof. And you're allowed to  
22 infer from people they don't call that there is a reason they  
23 didn't call them, because if this isn't what Mr. Hines  
24 believed, don't you think Mr. Altman would have trotted him  
25 down in here to tell you that?

1           This is exactly what Mr. Hines thinks. He thinks the  
2           notion that ZeniMax created a business for Oculus is silly.  
3           There's that same word again. He thinks ZeniMax used Oculus's  
4           tech to show off ZeniMax's game and got a ton more press and  
5           attention for that game than ZeniMax ever would.

6           Mr. Hines wasn't lying. He was telling exactly what  
7           he thought a year before Facebook ever announced the deal. He  
8           was saying we know how this works. We have an old game. They  
9           have a headset. It is a new platform. If we show them  
10          together, our game will do better.

11          Yes, Oculus benefited from that press, you bet they  
12          did, and so did ZeniMax.

13          Plaintiffs had plenty of people that could have come  
14          to testify. You saw emails. All these folks were on the  
15          email.

16          Mr. Andonov, we know why he didn't come down. I  
17          think he was the one that wrote silly and clowns and mocked us  
18          more than anybody.

19          Mr. Hines, we saw why he didn't come down, because he  
20          said exactly the opposite of what they are trying to claim in  
21          the courtroom, that they actually built our business.

22          Mr. Leder, he was the one who was so impressed with  
23          the Sony demo. I don't know why he didn't come down except I'm  
24          sure he doesn't back up their story.

25          Mr. Leshner, the general counsel.

1           Ms. Tallent was the one who said I wished we played  
2           our cards differently when she saw the Facebook deal. They  
3           certainly didn't bring her down.

4           And Ms. Thompson, the global communications director.  
5           Do you know why? Because she knows that they knew about these  
6           demonstrations. Whether they knew about every one or not is  
7           not the point. They knew because they wanted us to do it  
8           because it was good for them.

9           She's on the emails. So what do they do? Who do  
10          they have come in here to tell you-all about the technology and  
11          their work? Mr. Altman, the one guy who has the biggest stake  
12          in this whole litigation, the same guy that has his lawyers  
13          mocking how much money these gentlemen make.

14          What do you think is going to happen if you somehow  
15          award \$2 billion? He told you this is not a charity.

16          And what did he say? I asked him, "What are the  
17          parts of this VR technology that you think you actually own?"

18          "I can't define it. I'm not a technical person."

19          That's fair enough. He's a businessman. He runs a  
20          successful business. But then he should have some technical  
21          people that work for him that can explain it, right?

22          Mr. Zuckerberg is a really smart guy, but he's not  
23          the expert on the virtual reality technology. He hires these  
24          guys, just like we had Nirav Patel. He came into the  
25          courtroom. We had the guys who did it. They had no one.

1 And so who did they bring? They had no one to talk  
2 about VR, not a single person who isn't a paid witness, who  
3 does it for a living or is paid to come to certain conclusions.

4 They brought in Mr. Willits at the very last minute  
5 for about 15 minutes, and Ms. Keefe, with one question, one  
6 question on cross, and I will stop here because one of the most  
7 important things in a trial, too, is what we call the engine of  
8 cross-examination, because you can say anything on direct. You  
9 probably saw that.

10 Somebody presents one side of the story, and you  
11 think, oh, that sounds really good. I wonder what they are  
12 going to say. That sounds terrible for the Defendants.

13 And then you hear the cross-examination, and you're,  
14 like, oh, I didn't think that. That's a totally different side  
15 of the story.

16 Ms. Keefe asked him one question. "You've never  
17 written a single line of code at id; isn't that correct?"

18 He wasn't the technical guy. He's been there his  
19 whole life. He is indebted to Mr. Altman. He never had any  
20 other job. Just like Gloria told us, she had to accept the job  
21 when he threw the contract at them and said take it or leave  
22 it.

23 What do you think Mr. Willits is thinking? He's been  
24 there for 20 years. He couldn't tell us a thing about the work  
25 on VR, and that's because, other than Mr. Carmack, they didn't

1 do a thing.

2 One of the most important functions of the jury is  
3 that you're the judges of the witnesses and the credibility.  
4 And the reason His Honor says he doesn't like these deposition,  
5 even though you get to see folks, and we all like it better  
6 when people sit on the witness stand, because most of us judge  
7 people by how do they respond? Do they seem forthright? Do  
8 they answer both sides' questions easily and equally? Are they  
9 hesitant? Do they look down? Does their story sound  
10 ridiculous?

11 So under our system, that's always you guys who get  
12 to do that. And, really, maybe it seems, you know,  
13 overwhelming because of the technology, but it's not, because  
14 you have common sense. And you do this every day, whether it's  
15 your kid who tells you, you know, with the cookie in his hand  
16 that he didn't break the cookie jar or the car with the dent in  
17 it, that he didn't drive your car, or whether you're talking to  
18 a friend and you can tell whether they are telling the truth.

19 It's no different in here. And you saw that. You  
20 saw that with people. And you saw that most with Mr. Altman.

21 I've been doing this for a long time. A long time.  
22 I have never seen someone refuse to answer questions 16 times.  
23 And the big difference was it wasn't just that he refused and  
24 the judge had to order him, it's that he didn't even hesitate  
25 when Mr. Sammi asked him, because he had his speech ready and



1 off he went.

2 But when I asked him, he was going to be a lawyer.  
3 He was going to be very careful because he didn't want to admit  
4 anything, and he had his story ready, and he was going to tell  
5 it.

6 So what did he say? He couldn't quite keep his story  
7 straight.

8 On direct, what did he say? "We saw the opportunity  
9 of VR before the rest of the world. We're the ones who  
10 invented it."

11 "We," I love "we." He had nothing to do with it.

12 "We are the ones who took it to E3."

13 That's what he said.

14 On cross, "Oh, wait, we weren't the first company to  
15 do VR. We were the first company to have a commercially viable  
16 product which we demoed at E3," which he eventually admitted  
17 that wasn't true either because the prototype at E3 was  
18 never -- never, never, never commercially viable. It was  
19 great. Kudos to Mr. Carmack and Mr. Luckey, but it wasn't  
20 commercially viable.

21 Then what did Mr. Altman say? And these things  
22 matter because they're all about what you have to decide. Did  
23 these guys believe in and own and have this VR technology?

24 He tried to say in direct that they had been  
25 looking -- and this is a quote from the transcript.

1 "We had actually looked at VR technology for a long  
2 time, going back into the '90s. In fact, there was a  
3 photograph of the fellow who is our vice president of game  
4 development on the cover of the PC Gamer."

5 Now, if you're not a lawyer and you're a normal  
6 person, that sounds like somebody who worked for him at the  
7 time, right, is featured on there, and they are looking at it  
8 on behalf of ZeniMax, right? The normal person would think  
9 that.

10 was that true? No, of course it wasn't.

11 This magazine was out in 1996. That is Todd Vaughn,  
12 who didn't work for him at the time, and, in fact, ZeniMax  
13 didn't even exist in 1996.

14 why do you have to overreach like that and take  
15 credit?

16 Gloria came in and told you she had never heard of  
17 these guys working on VR until John started doing it.

18 You know what? That's the truth. There's nothing  
19 wrong with that. I don't know why they seem to think they have  
20 to say they own all of VR, they started it, everything comes  
21 from VR, everything that was ever done.

22 okay. Technology evolves. That's true. But  
23 everybody who has come into the courtroom says virtual reality  
24 was something different. And they weren't doing it other than  
25 Mr. Carmack, and certainly Mr. Altman when I put that

1 photograph in front of him had to admit, oh, yeah, we didn't  
2 exist in 1996.

3 John Carmack, when this first started to happen,  
4 before anyone was thinking about suing, before anyone was  
5 thinking of even having somebody like Facebook purchase them,  
6 in fact, when Mr. Luckey was still thinking he was going to  
7 send these little developer kits out to people and people would  
8 build themselves.

9 why? Not because he doesn't know what he's doing.  
10 Because he doesn't have a lot of money. He was working in his  
11 parents' garage, as you heard. He was, you know, fixing  
12 phones. He was like the rest of us folks. He was trying to  
13 build the business because he loved it. Yes. He did not have  
14 the money to manufacture it and to get it out there.

15 And Mr. Carmack knew. He knew that because he had  
16 the reputation as someone who is this great programmer who  
17 shared information with everybody, that people would try and  
18 give him the credit.

19 I don't think he ever thought that he would be hauled  
20 into court by his former boss and said that that belonged --  
21 that headset belonged to ZeniMax.

22 But he made it clear in 2012. He wrote to Palmer and  
23 said, "I am doing my best not to let anyone mistake the Rift as  
24 my work."

25 Now, why would he write that way back then? Because

1 he thought people might misunderstand.

2 And why would ZeniMax ignore it? why did they read  
3 that email and say I don't believe Mr. Carmack back then?

4 They are certainly not alleging that he was in some  
5 kind of conspiracy to steal from them back in May of 2012. In  
6 fact, they said he brought the prototype to E3 and it was  
7 great.

8 So why is it that they read that email, exactly what  
9 Mr. Carmack said, and they just ignore it? Because it doesn't  
10 go with their fantasy. It doesn't go with their fairytale.  
11 And it is exactly what happened.

12 Mr. Carmack did a great job, but Mr. Luckey started  
13 this whole thing off with the headset.

14 And the other way you know that that's exactly what  
15 happened is, even Mr. Altman has to admit that he never said to  
16 anyone that belonged -- the headset belonged to them.

17 If this was your great technology, if this all  
18 belonged to you, not just the game, not just the software, but  
19 if the headset, the whole VR experience belonged to you, would  
20 you let some other company go out and call it the Oculus Rift  
21 and sell it? of course not.

22 And he has a company that -- you know, I had to ask  
23 him two different days what his company was worth. And I asked  
24 him for documentation.

25 And the only thing he could say was, "well, when you

1 look, Ms. Wilkinson, at the shareholder value, you don't  
2 understand. Yes, it says 700, 800 million dollars, but that's  
3 not how we do it. You don't understand. The way we value our  
4 company is 4 to 8 billion dollars, but, no, we don't have any  
5 documents to show you or prove it.

6 Now, why did he want to fight so hard on that?  
7 Because he knows nobody who is an \$800 million company or even  
8 a \$2 billion company is going to spend the money it takes to do  
9 what Oculus and Facebook did.

10 So he wants you to think he has this big valuable  
11 company. And if he did or didn't, a \$2 billion asset, whether  
12 your company is worth 800 million or 8 billion is a huge asset.  
13 And you would keep it very close, and you wouldn't let anyone  
14 say that it's yours -- that it's theirs.

15 what happened here is that Mr. Altman and ZeniMax  
16 decided it was worth it to buy id because it had made great  
17 games and because John Carmack was so well known in the gaming  
18 industry, and that's true.

19 And they knew John liked to talk, they knew John  
20 shared his ideas, shared his technology, and they were okay  
21 with that because they knew that that was going to be good for  
22 them.

23 And you know what? I think they were more than a  
24 little angry, as you heard, that they paid or they promised to  
25 pay Mr. Carmack and the others so much money and they didn't

1 think that they got what it was supposed to deliver.

2 And you know what? That's fair too. That's totally  
3 fair. They paid a lot of money for the business, and from  
4 their perspective, they don't think they got what they should  
5 have gotten.

6 But that's a different dispute, and they could have  
7 had that dispute. They didn't. That's not what they brought  
8 the lawsuit about.

9 what they brought the lawsuit was to say that we  
10 stole their technology.

11 Mr. Hollenshead told you that this technology and how  
12 Mr. Carmack shared it in this instance and in every instance is  
13 what he always does. He talks to other hardware manufacturers.

14 You heard His Honor ask him, do you really call those  
15 folks and just tell them what is wrong with your product? And  
16 he said yeah.

17 Because they know who John Carmack is and because you  
18 want the software and the hardware to work together. So of  
19 course they talk to each other.

20 And Mr. Hollenshead said that's what he did. He's  
21 always been known for that. He's always shared his work. He  
22 never patents anything. That's what he did, and they knew what  
23 they were getting. Not only did they know, they agreed to it.

24 In the contract in 2009, when they bought the  
25 company, as we all know, they had a detailed employment

1 contract. And very specifically they said you are going to do  
2 the same thing you did while you were at id it. They wanted  
3 that John Carmack, they wanted his reputation, because they  
4 knew other people would want to work with him, and that would  
5 be better for ZeniMax.

6 Excuse me.

7 And he did what they wanted, even when it came to VR.  
8 He did in March try to plan to have this demonstration. He did  
9 work on his demo and create software, absolutely. And he did  
10 try other devices. And he did say I'm going to have the  
11 world's best demo.

12 He said when I asked him, it might be a little  
13 hyperbole, but, yes, as you can tell, he is very enthusiastic  
14 when he talks about the tech.

15 Do you remember the two days when he was on the  
16 stand? Even when I asked him, he likes to talk about it. He  
17 loves it. He is excited about it. Other than his family,  
18 that's his passion.

19 what he said, though, in black and white, on a  
20 message board where everybody could see it is, "I am going to  
21 be giving several demos in the next month, and Palmer  
22 graciously loaned" -- loaned -- "loaned me one of his test  
23 HMDs."

24 One of my favorite lines -- where is that? -- I  
25 thought you guys left out the demo. No. The -- oh, here it

1 is. I don't want Mr. Sammi to get mad at me so I'm not going  
2 to take it out.

3 MR. SAMMI: I haven't gotten mad at you.

4 MS. WILKINSON: Are you sure?

5 MR. SAMMI: Yes.

6 MS. WILKINSON: I'm still not going to do it.

7 MR. SAMMI: Don't throw me under the bus.

8 MS. WILKINSON: So this is it, right? This is the  
9 strap and the headset. That certainly doesn't look  
10 commercially viable, does it? That is why they call it a  
11 prototype.

12 So this whole thing that we had a commercially viable  
13 thing at E3, this was great. It got people excited. Nobody is  
14 going to buy this thing in this state. It has to be turned  
15 into that.

16 And what he said was this belonged to Mr. Luckey. He  
17 loaned it to me. And now they are saying, oh, you can say we  
18 know all this technology is ours because we still have it as  
19 evidence, because they never gave it back to Mr. Luckey.  
20 Mr. Carmack said, I'm -- he loaned it to me. It's one of his  
21 test devices. And I'm going to take it to the show.

22 One more time, ladies and gentlemen, it's what he  
23 said in 2012. Why are they ignoring what Mr. Carmack said?  
24 Why are they even standing up and arguing and saying it's  
25 theirs when their own genius programmer, the guy they say is so



1 great, tells them in a historical record that he loaned it,  
2 Palmer loaned it to him?

3 And of course he would because these folks aren't in  
4 the hardware business, right? We went through this. They  
5 don't make game consoles, they don't make personal computers or  
6 mobile devices. They make really great games. That's what  
7 they do.

8 So you need a platform, right? You need something to  
9 see your game, because just like this won't show you anything  
10 without software, you don't see anything if you look at this  
11 without a platform. Honestly, I don't understand that as some  
12 great point. You need both.

13 I'm happy to concede that this does not show anything  
14 without software. I hope they're also happy to concede that  
15 this software doesn't -- you can't do anything with it unless  
16 you have some hardware, a platform. That seems like a pretty  
17 obvious point.

18 And so they weren't going to be in the business of  
19 manufacturing so they need to pair up with people and partner  
20 up.

21 Plaintiffs have changed their story so much that  
22 Mr. Altman the other day when I was asking him took -- took an  
23 email that his own press person, Tracey Thompson, wrote years  
24 ago, saying, look, "Best" -- they are talking about the MSNBC  
25 awards, those specific awards.

1 And I asked him, "Your game won Best Game at E3.  
2 Best Game Play was your game.

3 But the Best Hardware was the Oculus Rift.  
4 And up here it says Best Hardware.

5 And what did he say to me? Oh, no. He literally  
6 looked at the writing and said, "You don't get it. This --  
7 Doom 3 BFG did win the award," because he so much wants that to  
8 be gone and that to say it was the game. But that isn't what  
9 happened.

10 It was the hardware that got the attention. And the  
11 hardware that got the money, the hardware that got all these  
12 folks to come and work.

13 Now, did Mr. Luckey need their help? Yes, he did.  
14 He certainly did, and he said that when he got on the stand.  
15 He said it in the documents. He knows he's lucky to have  
16 worked with Mr. Carmack.

17 But he and Mr. Iribe and Mr. Mitchell, they decided  
18 to take the dive. They decided to put the video together to  
19 say here's what we're selling. If you guys believe in us, you  
20 know, one, you're going get Doom 3 because that is what they  
21 promised; but you're going to get a developer kit headset and  
22 you are going to help us get off the ground.

23 This recording, again, was created and out on the  
24 internet long before this lawsuit ever happened. And not only  
25 was it, these people saw it, and they certainly didn't say at

1 the time, whoa, that's our property.

2 So take a look. I want you to watch it one more  
3 time, because honestly, I'm not as good as explaining what they  
4 did as they are, so I want you watch it again and see all the  
5 people who believed in what they did, what these guys said  
6 exactly what they were doing and what their plans were for the  
7 future.

8 (Video played as follows:)

9 MR. LUCKEY: My name is Palmer Luckey and I'm a  
10 virtual reality enthusiast. I'm the designer of the Rift.  
11 Games are something I'm really passionate about and even more  
12 than playing games, I'm passionate about bringing games to the  
13 next level.

14 what we're doing at Oculus is trying to create the  
15 world's best virtual reality headset, designed very  
16 specifically for gaming. Where this all started was in my  
17 parents' garage in Long Beach, California, and I was interested  
18 in stereoscopic displays, I was interested in head mounts, and  
19 the problem was there was nothing that gave me the experience  
20 that I wanted, The Matrix, where I could plug in and actually  
21 be in the game. And I was sure that somewhere out there, there  
22 was something I could buy, and the reality is there's nothing.  
23 I set out to change that with the Oculus Rift.

24 The magic that sets the Rift apart is immersive  
25 stereoscopic 3D rendering, a massive field of view, and ultra

1 low latency head tracking.

2 John Carmack is one of the best developers in the  
3 world -- Doom, Quake, Commander Keen. Carmack saw some of my  
4 work. That is originally when he reached out to me.

5 MR. CARMACK: For a certain segment of the  
6 population, the hacker/maker crowd, this is going to be  
7 awesomely cool to work with. What I've got now is, I honestly  
8 think, the best VR demo probably the world has ever seen.

9 We're certainly going to take this into our future  
10 projects.

11 MR. IRIBE: We're getting involved in Oculus now  
12 because we see an incredible opportunity here for game  
13 developers to experience something new.

14 MR. BOLAS: The Rift is taking years of virtual  
15 reality research and putting it into a package that everyone  
16 can use.

17 MR. BLESZINSKI: So I recently had a chance in person  
18 to check out the Oculus headset and, needless to say, I'm a  
19 believer. Even as a prototype, what I saw was extremely  
20 promising. We are extremely excited here at Epic Games to get  
21 the Unreal engine integrated with Oculus, and I think the  
22 possibilities for the games are extremely exciting, and I'm  
23 thrilled for the whole project.

24 MR. HELGASON: Well, I have got to say I just tried  
25 the Oculus prototype, and it was such an immersive, amazing

1 experience that we pretty quickly, like within an hour, decided  
2 to get behind this project.

3 MR. ABRASH: I got to meet Palmer Luckey and try out  
4 the Oculus Rift, and I have to say it was a very exciting  
5 moment. Could be the beginning of a whole new industry that  
6 leads us eventually to having true augmentation all the time,  
7 every place. And I'm really looking forward to getting a  
8 chance to program with it and to see what we can do.

9 MR. NEWELL: It looks incredibly exciting. If  
10 anybody is going to tackle the set of hard problems, we think  
11 that Palmer is going to do it. So we'd strongly encourage you  
12 to support this Kickstarter.

13 MR. MCCAULEY: In the past I've looked for these VR  
14 headsets and head-mounted displays and this is first one I have  
15 seen that I was truly impressed with.

16 MR. LUCKEY: There is a lot of great head-mounted  
17 displays out there, but they are all really, really expensive,  
18 up to over \$100,000. What the Rift does is it makes a high-end  
19 virtual reality experience available to the average gamer.

20 If you want to be one of first to try the Rift, grab  
21 a dev kit. We will provide access to our SDK, Unreal and Unity  
22 engine integration, and a copy of Doom 3 BFG Edition, the first  
23 Oculus-ready game.

24 So join the revolution. Make a pledge and help us  
25 change gaming forever.

1 (video stopped.)

2 MS. WILKINSON: It couldn't -- they could haven't  
3 been much clearer what they wanted to do.

4 Did they have one single headset they had  
5 manufactured at that point? No. They were trying to the raise  
6 money to do that.

7 Had they written their SDK? No.

8 Did they even have Doom 3 BFG really compatible yet?  
9 No.

10 That was all that they were saying that was their  
11 vision, that was their plan, and they needed people to support  
12 them. And those folks had the opportunity. They had the  
13 opportunity to work with them or partner with them and they  
14 chose not to. They chose to watch the video, to know the  
15 plans, and stand on the sidelines.

16 Because this came out August 1st of 2012. And you  
17 may recall that Mr. Altman said -- I asked him, well, if you  
18 saw that and you thought it was your technology, did you jump  
19 up and down, did you call them and say, hey, take that stuff --  
20 my stuff, the Doom 3 and Mr. Carmack out of your Kickstarter?  
21 No. He sent around that email, remember, it said Kickstarter  
22 and said we need to discuss. He saw it, he admits he saw it,  
23 and he didn't do a thing about it.

24 If you thought the headset was yours and you thought  
25 Mr. Luckey was saying it was his and Mr. Iribe was saying we're

1 going to make a business out of it and all your competitors  
2 were saying I think it's terrific, you wouldn't do anything  
3 about it? You wouldn't call them and say, whoa, that's my  
4 property. That's my business. You're talking about what  
5 happened at E3.

6 He didn't do anything because he knew it was to their  
7 benefit.

8 Again, look at what they did and what they said  
9 before there was any hint of a lawsuit.

10 So what do they do? They complain now, well, you  
11 demoed some but we didn't know about that. But what is really  
12 bad is leaving it.

13 And I agree with counsel. This is what he said in  
14 the opening: "Now, it's one thing to show the demo, which is  
15 like, okay, you know, we can see how that might benefit us.  
16 It's another thing to leave the code so you can dig into it,  
17 open it up, and try to learn its secrets".

18 I agree with him.

19 And he suggested to you that there was going to be  
20 evidence that the code, the testbed, was left at Valve and that  
21 is why they gave the endorsement. Guess what? There wasn't a  
22 single witness or document that proved that anything was left  
23 at Valve. They demoed the game. They brought it back.

24 So the idea that somehow it's a violation of the NDA  
25 to show on the headset the game, that's exactly what they were

1 doing at E3 and doing at QuakeCon. That was exactly the  
2 purpose as the NDA says, the reason that they got the game, was  
3 so they could demo it and people could get excited about the  
4 game and get excited about the headset.

5 But they can't prove, because it didn't happen, that  
6 these guys left anything at Valve. And they can pull up some  
7 email like I showed you in opening where he showed the first  
8 half of the text and didn't show you the bottom, where  
9 Mr. Iribe said, no, you can't do that. We would have to ask  
10 Carmack. That's the evidence in the case. That's the  
11 evidence, not him arguing, oh, but that doesn't make sense.  
12 That's not evidence. The evidence is, what all the witnesses  
13 said was we did the demo, we didn't even have enough headsets  
14 to leave at that time, and we certainly -- why would we leave  
15 the game? We didn't leave the game. And we went back.  
16 Mr. Newell showed up and we showed him the demo like everybody  
17 else.

18 Now, Mr. Carmack helped them not only with making the  
19 demo, but he did email back and forth and we're going to talk  
20 about that, because you would have thought listening to counsel  
21 that there are a zillion emails and how often it was. There  
22 were 28 emails before we put out our own SDK in March 2013.  
23 28. That's all there were.

24 But Mr. Carmack had in his contract that he was  
25 specifically allowed to share any confidential information he



1 wanted if he thought it was to benefit the company. And that  
2 makes sense. He's the technical guy. Again, Mr. Altman agrees  
3 he knew better.

4 So Mr. Carmack thought it was in the interest of the  
5 company, and so did everyone else, to share information, to  
6 give feedback on the game to make it compatible with the  
7 headset and make the headset compatible with the game with the  
8 folks at Oculus. That was exactly what he was supposed to do  
9 and his contract said it.

10 He had to protect confidential information except as  
11 necessary to perform his duties as an employee and as the chief  
12 technical director and as the person who is trying to get his  
13 games out. That's exactly what he should do. And that covered  
14 every kind of information.

15 This is what confidential information is defined in  
16 the contract. It's everything. He's allowed to share anything  
17 he wants if he thinks it's in the benefit.

18 And that's exactly what he did and that's exactly  
19 what witnesses said.

20 Mr. Altman and Mr. Hollenshead, Mr. Hines, Mr. Hatch,  
21 in emails and testimony all said that those demonstrations  
22 provided benefit to Doom 3 BFG, which it did, an old game that  
23 was getting refurbished.

24 Mr. Luckey signed this at 19 years old. He didn't  
25 have a general counsel. He signed it. He knew what he was

1 signing, and he took responsibility for it. And he didn't  
2 violate it.

3 He showed the demos, the VR testbed and when they  
4 eventually gave him Doom 3 BFG, they showed the demos just like  
5 these guys showed them. That's not a violation. And it's  
6 certainly not when the big exception says "proprietary  
7 information shall not include information that has become  
8 public."

9 He didn't show the code. He didn't even have the --  
10 he didn't haven't the source code. What they showed were the  
11 pictures.

12 So if -- let's just pretend this is the demo, they  
13 stick it in the computer, this is what Mr. Carmack created, all  
14 right? You put on the headset and you see the game, right?  
15 You see either Rage, which was the testbed, or you see  
16 Doom 3 BFG. You don't see any -- what did you say? 1's and  
17 0's whatever, you don't see the computer program; you don't see  
18 the source code. That's what you see.

19 That's what he's allowed to share and that's what was  
20 public. Reporters were doing the same thing. They were coming  
21 in and watching this. They were doing it at QuakeCon. They  
22 did not share the code -- there wasn't even code they could  
23 get. This was the executable, as everybody said. But nobody  
24 saw the secret sauce. Nobody saw the source code. And  
25 Mr. Luckey certainly didn't violate his nondisclosure

1 agreement. And he told you, he explained why.

2 He said ZeniMax was take making Doom 3 public through  
3 Mr. Carmack at E3. They showed both the Doom at QuakeCon. It  
4 was all public information. He didn't think he was doing  
5 anything wrong.

6 And most importantly they're at QuakeCon together.  
7 They're out doing the demos and reporting them. Nobody said to  
8 him, again, before any lawsuit was filed, nobody said you are  
9 violating your nondisclosure agreement. They didn't write him  
10 a letter. They didn't say anything because he wasn't. He was  
11 doing what they had expected, to give publicity to them.

12 The best example of this is their own convention.  
13 Again, I keep asking, why do they not want to listen to what  
14 Mr. Carmack says? It's in black and white. You are going to  
15 hear it in video. There is no dispute from the guy who  
16 actually understands.

17 we have lawyers making arguments about technology who  
18 admit they're not the technology experts, and they are making  
19 arguments after they sue.

20 This is what Mr. Carmack said at the time at  
21 QuakeCon, August 2012, about the Rift.

22 (video played as follows:)

23 MR. CARMACK: And when I ran into Palmer and he had  
24 basically built something probably better than I would have  
25 done if I had put it together myself, I'm like, okay, I can

1 abandon working on all of these projects, and this -- this is  
2 the platform. Mostly as a software guy, I want something to  
3 write software for. It's fun to tinker with the hardware, but  
4 I would really as soon have somebody else do that.

5 (End of video)

6 He is saying it is not his hardware. Palmer did it  
7 better. He's the software guy.

8 why are they standing up and saying it's the whole VR  
9 experience, they own the whole thing, the prototype is theirs?

10 They don't have one fact witness, one technology  
11 person for their company, to dispute what Mr. Carmack said on  
12 their stage at their convention.

13 That takes a lot of guts, honestly, ladies and  
14 gentlemen, to come into this courtroom with the guy you say is  
15 the expert, that you film, and you put him out on the internet,  
16 and he said exactly what he is still saying today. And you  
17 come into a courtroom and you say I don't believe what he said  
18 even though I recorded it and put it out on the internet and  
19 said he was the technical expert.

20 That takes a lot of guts to get up in a courtroom and  
21 claim that when you can look at the movie, you can look at the  
22 video, and you can look at the documents.

23 And then not only do they want to say that it was  
24 their testbed and their demo, they said in opening there's a VR  
25 engine, we call that a VR engine, and I said when we started, I

1 have never seen that in the documents.

2 well, guess what? It was nowhere in the documents.  
3 They have an id Tech engine. There was nowhere where  
4 Mr. Carmack wrote I have invented the VR engine.

5 why does that matter? Not because it's ultimately  
6 the issue in the case, but it shows that they are trying to  
7 exaggerate what contribution they made to Oculus because their  
8 code is not Oculus's code.

9 They did not even prove to you that Oculus got their  
10 code except for a couple of instances.

11 Mr. Carmack said he didn't give any code. He had --  
12 for the VR testbed. He had an executable. So the executable  
13 was not code.

14 Mr. Hollenshead said the same thing.

15 So that was for the VR testbed.

16 Mr. Hollenshead came in here and said I helped them,  
17 we helped them load the version on. It was the executable.

18 So this whole thing is Nate Mitchell's computer is  
19 missing? Mr. Hollenshead said he helped load the version on.  
20 He didn't give away any source code. Nobody gave that source  
21 code.

22 what you're going to see -- what we saw in emails are  
23 a few snippets, and I'm going to show you every one of those to  
24 show you we are not getting -- Oculus was not getting the  
25 source code.

1 But in the end the real test is, it doesn't work on  
2 any of our prototypes. If this was so important that we got  
3 their source code, then we should be able to play their VR  
4 testbed and their Doom 3 BFG on our headset.

5 And everybody told you that Doom 3 and the VR testbed  
6 worked on the E3 prototype. That's true.

7 It did not work on the first developer kit and the  
8 headset that we sold, it did not work on the second one, and it  
9 did not -- does not work on the most recent one.

10 So what is their theory, that we somehow copied it,  
11 but then we changed it enough so it would work on our new  
12 headsets because there are different lenses, there are  
13 different displays, there's a totally different sensor.

14 We didn't get this code. If we -- it doesn't show on  
15 any of our devices. So what are they saying?

16 They are saying after the fact that we're mad that  
17 John was actually working with you and then he went to work for  
18 you permanently. That's what they're mad about. Because they  
19 had plenty of opportunity to say stop. And the law actually  
20 recognizes that.

21 Another thing about this big charge, part of the  
22 reason that it's long, is our fault, because there are claims,  
23 and then there is what's called actual defenses.

24 So we don't think they proved their claims, but if  
25 there's other ways, even if you thought there was something

1 wrong, the Court says if they prove it they still don't get any  
2 recovery.

3 And one of that is if they delay, they didn't bring  
4 their claim when they could. And that is what this is.

5 Defendants are not responsible if there was a delay  
6 in asserting a right or a claim. That's the Plaintiffs  
7 asserting it. The delay was not excusable, and there was undue  
8 prejudice.

9 If they thought this was theirs before we sold it,  
10 they certainly should have come up. But when we went out in  
11 March 2013 and we made our code public -- remember that? -- we  
12 made the code -- where is our code? -- we not only sent it to  
13 those guys, which we will talk about, but we made this public  
14 on the internet.

15 I go to the, you know, the simple watch. If I steal  
16 your watch, do I then put it up on the internet and say here is  
17 the watch that I'm selling?

18 We put our code up as open source. If they cared and  
19 they thought it was their property, they could have looked at  
20 it and they could have told us to stop, they could have sued  
21 us.

22 They didn't do a thing. They delayed because they  
23 didn't think it was their code. And that's reason enough for  
24 them not to prevail on any of these claims.

25 And there was no doubt they knew what we were doing.

1 we were sending them all the information. Remember those  
2 investor decks?

3 Mr. Altman doesn't deny he got them. Brendan went up  
4 to meet with Mr. Andonov who told them you're a bunch of kids,  
5 that's, you know, round six of the treatise dismissively and  
6 mock us.

7 we sent them everything we're doing.

8 If you don't think it's ours, we say software, and  
9 Mr. Altman said under oath "It did not raise a concern." If  
10 you thought the whole thing was yours and you had been working  
11 with Oculus and they wouldn't partner with you, and you see  
12 them saying this is what we're going to sell, we're going to  
13 have an SDK, we're going to sell the headset, you wouldn't say  
14 to somebody "that's mine"? It didn't raise any concern because  
15 he didn't think it was his.

16 And nobody thought it belonged to ZeniMax because  
17 Oculus did everything to make them understand that they wrote  
18 the code. They wrote this code, and they sent it to ZeniMax in  
19 December of 2012.

20 This is Exhibit 683, which is about 800 pages of  
21 code. And they sent this to Mr. Carmack, and it was checked in  
22 to the repository.

23 Remember, you heard Gloria they said that's -- it's  
24 like a vault where they keep all the code. They checked it in,  
25 and they've had it. If they thought there was any problem,



1 they don't have Mr. Carmack, that's true, although they had him  
2 for months after this was checked in, they could have hired  
3 someone else. They could have gone and compared it.

4 And the suggestion was, oh, that's expensive or it  
5 takes a lot of time? Right. You think it's yours, you invest.  
6 You value it. You hire somebody.

7 They didn't do a thing, and it was right in their  
8 files. Why would we steal something and then give it back to  
9 them so they could inspect it?

10 Back in November, December 2013, we didn't -- I mean  
11 2012 -- excuse me -- because it was right before that -- we  
12 didn't think Mr. Carmack was coming to work at Oculus. Oculus  
13 still thought they were going to end up in a partnership and  
14 these Doom 3 BFG games would go out and be compatible with the  
15 headset.

16 We sent it to them because we wanted Mr. Carmack's  
17 feedback, we wanted it to work together. If we thought we had  
18 stolen their code, we wouldn't send it back.

19 And we then announced it. We sent out the headset  
20 and developer kit, and here is the story on the timeline that  
21 Plaintiffs want you to believe.

22 They want you to believe -- this is from Mr. Altman's  
23 testimony. He says he knew as early as September 10, 2012,  
24 that Oculus had his code. He didn't just say the headset. He  
25 said remember that proposal that Mr. Iribe sent where they take

1 that language that says, you know, we say we would like a  
2 license, and they said, oh, that was for your prior work. We  
3 don't agree with him. But he says that put me on notice by  
4 that date.

5 This is almost two years before he sues. He says by  
6 that date, I knew they had our code.

7 If you believe him, if he did that, then when the  
8 code was sent or when Mr. Carmack, who is not hiding anything,  
9 he writes an email directly to Mr. Altman and says Oculus is  
10 about to ship their headset.

11 And then when you see it publicly announced that we  
12 ship our headset and the SDK, you know -- you know he says six  
13 months before that you believe -- I don't want to say no -- you  
14 believe that somebody else has your code and you see them go  
15 out and sell it and you don't say anything.

16 I'm telling you that is not credible. That doesn't  
17 make any sense. That is a lie. That is a boldface lie,  
18 because nobody who runs a business, no one who is a steward of  
19 shareholder value would let code that they protect, they put up  
20 this list, oh, we lock it up, we have a repository, we're very  
21 careful, we turn square corners.

22 well, if you turn square corners, you don't let  
23 someone have your code for six months and then sell it and you  
24 just sit back and say I'm not concerned. And that's what he  
25 said.

1 Look, I asked him because it is ridiculous.

2 I said, "But Oculus was going to commercialize what  
3 you thought was your product."

4 Oh, no. We knew the technology was ours. We knew it  
5 at that time. We thought we were going to partner with them.  
6 Okay.

7 So by the time we went out in the market in March of  
8 2013, they had walked away from us. They didn't want to  
9 partner with us.

10 So by the time it was out on the market, I said, "So  
11 were you concerned when you found that Oculus was going to  
12 commercialize their headset?"

13 "I don't remember a concern."

14 There's only two things that can be true. Either he  
15 didn't believe it was his source code and technology or he  
16 didn't care that somebody else was using it. Either one is not  
17 good.

18 And either one, either he's lying or he didn't sue us  
19 when he should have or at least write us a letter and say wait,  
20 you have my source code. What are you doing?

21 And he did nothing. They did nothing. Mr. Leshner  
22 did nothing, Mr. Andonov. Nobody called Mr. Iribe. Nobody  
23 said, hey, we're not partners anymore. We told you to take a  
24 hike. We don't want to invest in your company. Your deal was  
25 insulting to us. Give us back our technology. You have it.

1 They didn't do a thing.

2 And they certainly didn't go out and get the talent  
3 to use the product themselves because if they had this  
4 prototype and it was theirs, what have they done with it since  
5 then?

6 Look, it is -- I will give them this -- it's in  
7 exactly the same condition it was in 2012. They didn't make  
8 one new headset. They didn't even put a new strap on it. It's  
9 a joke to claim that they were involved with VR.

10 If you thought this was so great and your software  
11 was so great and you're a CEO who was in charge, again, of  
12 shareholder value, you go out and find the talent. And it was  
13 out there, because Mr. Iribe found it. Mr. Iribe found these  
14 people. Mr. Mitchell found these people.

15 They had people from Valve who came to work for them.  
16 They had Mr. Patel -- Patel who you saw. And they even had  
17 Professor LaValle, who was in Finland. That's my favorite one,  
18 because their allegation is this man who has taught at the  
19 University of Illinois, who is, as we could tell, yet another  
20 genius, that he actually signed on to this company to steal  
21 technology and not write his own with his wife, as he told us.

22 That's what they want you to believe, that he was  
23 sitting in Finland and emailing with Brendan and others, and  
24 they said, hey, we've got this great idea. We stole someone's  
25 technology, we know you're really good at writing this fancy

1 code, but we want you to just come and copy the code, and then,  
2 you know, work with us for a year and then go back and teach.

3 These people don't know each other. why would -- why  
4 would Dr. LaValle, Professor LaValle do that?

5 You know why he wanted to write code? Because he's  
6 good at it. He's proud of it. It's his life's work. He and  
7 his wife -- we don't ask -- they like to do it together.  
8 They're brilliant, they're good at it, and they should be proud  
9 of it.

10 Mr. Patel since he was a kid has been taking apart  
11 sensors and building them himself. You think he really signed  
12 on with these people he didn't know after he put everything out  
13 in public?

14 This is how these folks got together. You think that  
15 he signed up to copy code, to build a sensor, to steal a sensor  
16 from these guys? No. He put his information out on Meant to  
17 Be Seen just like Mr. Luckey, Professor LaValle wrote his  
18 article, they put things on GitHub, because they all wanted to  
19 share the information. They had a passion, and they wanted to  
20 make it work.

21 And that's why it was easy for Barbara  
22 Frederiksen-Cross to say nobody copied any code. Nobody copied  
23 any code.

24 Not only was it not similar, was it not literal or  
25 nonliteral copying, but these guys wrote it themselves, and

1 they came in and told you about it.

2 Mr. Patel says I didn't use any -- I didn't even see  
3 any source code from Mr. Carmack.

4 Mr. LaValle went through the types of code that he  
5 wrote, the exact code that these guys are claiming is their  
6 supposed trade secret, and what did they say? Mr. LaValle  
7 didn't know what he was doing? Maybe he's asking for help back  
8 and forth. He really didn't ask for help, as he said. He  
9 didn't even know Mr. Carmack. But so what? So what if you're  
10 asking other people?

11 This is the code he wrote. And their allegation, if  
12 you -- if you actually find that we stole their technology, you  
13 have to believe that Mr. LaValle joined the company and  
14 immediately started copying Mr. Carmack's code.

15 You saw him on the witness stand. He was honest,  
16 straightforward, he answered both sides' question equally. He  
17 did not copy anyone's code. And he said it again and again  
18 under oath.

19 And Mr. Carmack said back at the time he saw some of  
20 their code. They sent it to him when they sent the SDK and he  
21 said it's better than his.

22 And he told you on the witness stand, people who know  
23 code and maybe some of you know this, people have different  
24 styles and structures. There is a DNA. And if you look at the  
25 code Oculus wrote, you can see the evolution from DK1 to DK2

1 and to the commercial version, CV1.

2 He said there was no DNA from the VR testbed and from  
3 Doom 3 BFG that would show any similarities. He said, "There  
4 was an extreme break with the code that I wrote where it's a  
5 completely different style."

6 So Plaintiffs then say -- Mr. Sammi had -- maybe he  
7 will bring it out again, that chart with all of the emails on  
8 it with the writing. He gets to talk last so I don't know what  
9 he is going to do. I tried to count up -- I might have gotten  
10 it wrong, and I apologize if I got it wrong, but I found in  
11 evidence about 28 emails that he says show these guys sharing  
12 information. So a simple analysis for me.

13 It was over seven months. Seven into 28 is four.  
14 The outrageous sharing of technology and short emails is four  
15 emails a month between the companies, when they were working  
16 together. That's not, oh, my gosh. These guys can't do  
17 anything right. Why do they need to ask for help. These are  
18 all people who are interested in the same thing and they're  
19 allowed to be working together until ZeniMax says stop.

20 And then Mr. Carmack leaves. He leaves because they  
21 don't want to do VR and guess what? He gets to take his brain  
22 and his knowledge and his experience with him. In his contract  
23 all that work that he did is not considered confidential  
24 information and Mr. Altman admits it.

25 I asked Mr. Altman, "Did Mr. Carmack gain a lot of

1 experience working on virtual reality while he worked for you?

2 "Yes, never claimed otherwise.

3 "So when he went to Oculus and used that experience  
4 and knowledge from VR, that wasn't a violation of his contract,  
5 was it?"

6 And he said, "No, it was not a violation."

7 So all this know-how, that is not the question. The  
8 question is: Did they prove that we copied their code?

9 They go back to this -- and I'm sure you will hear it  
10 for the last half hour -- that Mr. Carmack had these different  
11 devices.

12 The Rage code which wasn't VR, which had been on his  
13 computer since 2009 or 2011, is not anything anyone came in  
14 here to say was copied.

15 The HP desktop where that he put that USB, plugged it  
16 in, and made his copies of his files was returned to the  
17 Plaintiffs with all of the files on it and there is no evidence  
18 that those emails, the files, even the snippets of code were  
19 used in the Oculus technology.

20 And then the witnesses came in and told you that all  
21 the tests you're going to look at, Plaintiffs didn't apply it  
22 right. And you know what? You can take her word for it or you  
23 can remember what Plaintiffs showed you.

24 Remember Dr. Dobkin? I'm sure he is really smart.  
25 Teaching at Princeton, I'm sure. But this is what he showed



1 you and said, take my word for it.

2 Now, maybe it is similar and maybe we all wouldn't  
3 know, but I think Barbara Frederiksen-Cross pulled this out and  
4 showed you how different it was. Why didn't you get that? Why  
5 isn't -- why aren't -- why wasn't the expert showing you how  
6 they were similar? Because if you're not showing literal  
7 copying, you're -- they're asking you to take their word that  
8 it's similar enough.

9 well, guess what? That is not obvious. That is not  
10 like saying these are the same words. And these are math  
11 problems where there are only so many solutions. You heard  
12 that from Mr. LaValle, like how many ways can you measure the  
13 head and the neck? There is only so many ways.

14 So if you have to believe them, they need to present  
15 more evidence to you about why this is really similar, this is  
16 the same.

17 And what do they have? They do have one thing, I  
18 will tell you that. We do have seven lines of their shader  
19 code. It was sent. And I think I told you there were only two  
20 emails that show code being sent. And one is this one.  
21 Defense Exhibit 1839, which sends shader code.

22 And I want, if I could, to switch it, if you don't  
23 mind, to the ELMO only because I think it's important for you  
24 to see how much this is.

25 First of all, this is an email that contains both

1     Oculus's shader code and ZeniMax's.

2             So let's see if I can turn on the power here.

3             Okay. Oops. Sorry.

4             This is an email from Mr. Reisse at Oculus that he  
5     actually sent saying, this is the Oculus shader code. Look how  
6     short it is. That's our code. Okay?

7             The email attached and it says "file produced in  
8     native format." That means that it was the code. This is the  
9     ZeniMax VR testbed shader code. That's it. That's how many  
10    lines. And we do have that in our vault. I call the  
11    repository a vault.

12            It's not in our Oculus products. It's not in any.  
13    They did send it to us. We did get it from the VR testbed.  
14    And we kept it in the vault. We did not use it in our  
15    products. And we had in the same email our own shader code.

16            What is the other one? The other one is actually  
17    even more misleading, I think, because this starts as an  
18    email -- as we know starting from the back, this is PX686.

19            It starts in the back as an email from Mr. Antonov to  
20    Mr. Carmack and this is about chromatic aberration. See, this  
21    says -- that's Mr. Antonov. And when you look at it, he's  
22    writing to him and talking about the code he's already written.

23            Why do you know that? See this? Oculus SDK  
24    feedback. So we've already sent -- Oculus has already sent its  
25    code to ZeniMax and Mr. Antonov is asking Mr. Carmack for

1 feedback, and then he says, "By the way" -- sorry, let me make  
2 this a little -- "have you had a chance to experiment with our  
3 distortion parameters and other data from HMD info? We would  
4 love -- we would -- would you be able to integrate that update  
5 if we send it to you within a week?" Because they need to be  
6 able to work together.

7 It's after we say that, that Mr. Carmack sends us --  
8 he says, "I haven't looked at your distortion code" -- this is  
9 on the 9th back to Mr. Antonov -- "I did add a simple  
10 correction for chromatic aberration," and then he gives it to  
11 us.

12 That's the only other evidence of code coming across  
13 the email. That's it. And that is not in our code. But that  
14 is how many lines it is.

15 So when Plaintiff gets up and takes these big  
16 notebooks and says, oh my gosh, look at all this code that was  
17 copied, this is not what you're going to get back in the  
18 evidence room. This is not. They have to show you which lines  
19 were actually copied. And it is nothing like this.

20 I don't know exactly what they're going to say are  
21 the pages, but these are just big notebooks full of all the  
22 code or excerpts of the code. Not of what their expert says  
23 were copied and certainly not what they showed you was copied  
24 and that's their burden of proof, because they hauled us in  
25 here and they have to prove it.

1 Can we go back to the slides, please?

2 Now, thankfully, you saw this yesterday, so I don't  
3 want to go -- I think it's probably pretty fresh in your mind,  
4 but I do want to remind you there were articles showing all  
5 these trade secrets were out there, because what they are  
6 saying is a trade secret are the steps that it takes. What  
7 they say is copyrighted is the code, okay. But trade secrets  
8 they are saying are the steps. And all the steps are in these  
9 articles. And people that know how to code, not me, know how  
10 to follow those steps and implement that.

11 They even made some of their own code public.  
12 Mr. Sammi said very carefully, well, we didn't -- we took out  
13 virtually all of the VR code from the Doom game because we  
14 didn't want to make it compatible, because we were mad at  
15 Oculus. But they didn't take it all out. They left in the  
16 distortion correction. So I don't know how they can say that  
17 wasn't public, everything else was public but they did it  
18 themselves.

19 And Dr. Balakrishnan looked at all of those trade  
20 secrets and said they were known, they had been public, and  
21 they were different.

22 And the same thing, remember Dr. Howe yesterday from  
23 Harvard? He said the same thing. He looked at these different  
24 secrets and he said the math was different, the definitions,  
25 the offsets. Same for predictive tracking, different math,

1 different units, different algorithms and variables.

2 Plaintiffs have to persuade you that it's more likely  
3 than not that our code actually was copied. The overwhelming  
4 evidence in this case is that the people that got on the stand  
5 and told you that they wrote the code, the experts who said the  
6 code was different are telling the truth. The people who wrote  
7 the code themselves came in and told them -- told you.

8 In contrast, Plaintiffs who say that this was their  
9 trade secret and it was so valuable have their own expert who  
10 admits he can't find anything in their books that say that they  
11 value these trade secrets, and that is one of those factors you  
12 have to look at.

13 I don't know where it should be. I don't know  
14 whether it should be on their financials. I don't know whether  
15 it should be a budget. All I know is if you think something is  
16 valuable and think it is worth protecting, you would expect it  
17 to be valued. And the reason they have to -- that they have to  
18 go and hire an expert is because they couldn't get it out of  
19 their own documents. They couldn't point to anything.

20 So they had Mr. Jackson come in and say, well, I'm  
21 not going to say it was valued. I'm just going to tell you the  
22 value of the damages is \$2 billion. And the reason I know that  
23 is a prudent investor would have paid that.

24 Look at what that instruction says. At the time the  
25 trade secrets were misappropriated. It's not when Facebook

1 bought it. Their claim is that we stole their trade secrets in  
2 2012.

3 A reasonably prudent investor would have paid for  
4 that -- they don't have any evidence that anyone would have  
5 paid anything for those trade secrets at the time. Mr. Altman  
6 says he didn't know how valuable they were. He wasn't willing  
7 to invest.

8 It's not supposed to be when somebody else decided it  
9 was valuable. It is supposed to be what a reasonably prudent  
10 investor would have paid for trade secrets when they were  
11 stolen.

12 And what do you have? You have a record of whether  
13 they were ever willing to invest in this technology, whether  
14 they valued it. They rejected it offer after offer after  
15 offer. And the real reason is because Mr. Altman -- Mr. Altman  
16 thinks he overpaid for Mr. Carmack.

17 He thinks -- he tried to convince you that he made --  
18 he says, "Mr. Carmack made his 100 million with us. I expected  
19 him to have some sense of obligation for us having put money in  
20 his pocket."

21 And he argued with me over whether he had actually  
22 paid that money until we said, well, that is a note and he  
23 admitted, well, I haven't paid 40 of the \$100 million. Those  
24 are crazy numbers to most people, right? But it's not the  
25 amount that matters. It's the principle.

1 He comes in and said we've paid him everything and we  
2 didn't get what we expected. No, we really didn't pay him  
3 everything. And when I asked him, are you going to when he  
4 comes due in June, he gave the lawyer answer, well, I'll have  
5 to talk to my lawyers and see.

6 He's mad at Mr. Carmack. He said it. And he is so  
7 mad that he didn't fulfill his obligation under the contract.

8 We have one small counterclaim and Plaintiffs mock  
9 that too. Plaintiffs said, you're suing -- to Mr. Carmack,  
10 you're suing us for \$250,000?

11 And Mr. Carmack said, yes, in the contract it said if  
12 you don't give me a 60-day renewal, which would have allowed  
13 you to automatically keep me for a year -- that is what  
14 termination due to nonrenewal -- you would pay me my base  
15 salary for 12 months.

16 And you know what that is? He made \$250,000 a year.  
17 That was his base salary.

18 Now, are we asking you for that because that money is  
19 going to make a difference to him? No. No. It's the  
20 principle.

21 After three years of ruining his reputation and  
22 claiming that he, who worked around the clock on this, stole  
23 and copied technology that belonged to ZeniMax, and then  
24 ZeniMax let him walk out the door and didn't give him an offer  
25 that if they want the contracts to be honored, then they should

1 honor the contracts.

2 Mr. Altman agrees he didn't do it. He said, I didn't  
3 give him the 60-day offer and if I would, he had to stay for  
4 another year.

5 He wasn't the only one who didn't want to stay  
6 around. Yesterday, again, because we had to, because they were  
7 claiming that Mr. Carmack purposely violated his  
8 nonsolicitation agreement and recruited the people that he had  
9 worked with for years, we brought in Gloria, and she told you  
10 herself why she left. Not because she was working on VR. In  
11 fact, she stuck around.

12 She didn't like the benefits because her health care  
13 wasn't paid. She didn't like that Mr. Hooper was fired and  
14 Mr. Carmack had no say. She didn't like that the guy she loved  
15 to work with, other than her husband, and her buddies had left,  
16 and she saw what was happening at the company when 30 people  
17 left id that year.

18 But to top it off, one of the, quote, id 5,  
19 Mr. van Waveren, has cancer, and they took credit for giving  
20 him two days off, she said, with his pump to work at home.

21 Mr. van Waveren isn't here because he is still very,  
22 very sick, but she decided that that was enough. It wasn't  
23 because Mr. Carmack recruited her. It wasn't because she had  
24 been doing VR work and she wanted to take it away from ZeniMax.  
25 It was because she didn't like working at ZeniMax.



1 And under the category of life is too short, she and  
2 her husband and their friends who loved to work together left  
3 and they left to go to work for Mr. Iribe and the folks at  
4 Oculus because it was exciting, because they were pursuing a  
5 dream, because they were starting off, they were risking  
6 something to build a new technology.

7 And that's what invigorated, what excited Mr. Luckey,  
8 Mr. Carmack, Mr. Patel, Mr. LaValle, Mr. Antonov, Mr. Mitchell,  
9 and Mr. Zuckerberg. That's what they had in common. They  
10 wanted to do something different, and they were willing to risk  
11 it to try to bring some kind of new technology and work  
12 together as a team that was different from anyone else.

13 It wasn't like working at ZeniMax. It's nothing like  
14 working for old business. What do you have? Old business, new  
15 tech. It couldn't be more obvious.

16 There is nothing wrong with old business, secure,  
17 loyal, as Mr. Altman said, but there is certainly nothing wrong  
18 with going to new tech and taking a risk and working with the  
19 people that you like.

20 So I'm sorry that we had to be here for three weeks,  
21 that we had to bring in these other people, especially Gloria,  
22 to explain why she didn't get solicited, why she left this  
23 company, because, honestly, it is really not what the case is  
24 about.

25 But when they throw the mud, which I'm sure will

1 happen in the last half hour, we had to defend ourselves.

2 we've showed you the emails of what Mr. Altman said  
3 at the time that the deal was announced. He said when Facebook  
4 said they would buy Oculus, it was insanity, an insane  
5 valuation and a dubious strategy, and that's what he thought.

6 But because of those emails, Plaintiffs, who get the  
7 last word, are not going to want to talk about what the written  
8 record is, I can promise you that. I don't know what Mr. Sammi  
9 is going to say. He gets to say whatever he wants in the last  
10 half hour because he has the burden of proof, and I hope you  
11 will hold it to him.

12 But I want to give you a list, since I don't get to  
13 stand up again, of what I think he will talk about and what he  
14 will ignore.

15 what he will ignore is that ZeniMax's alleged trade  
16 secrets were well known. He didn't go through any of that with  
17 you. He just said, oh, they're wrong, they're wrong.

18 He didn't address why ZeniMax disclosed its own  
19 technology and made that open source and how that can be  
20 reconciled with his claims.

21 He didn't address that ZeniMax's VR testbed and the  
22 Doom 3 demo, why they're not compatible with DK1, DK2 or CV1,  
23 and that shows somehow we still stole their technology.

24 He doesn't address why Mr. Altman said he knew that  
25 they had -- Oculus had their code in 2012 and he did nothing.

1 He certainly didn't address yet why they refused to  
2 invest and why they mocked and made fun of Palmer and the Rift  
3 and even Mr. Carmack calling him propeller head throughout the  
4 documents in this case.

5 what they will want to talk about is the secret  
6 meeting, Mr. Carmack copying files, missing devices, those id  
7 employees, DVD ripping, which I'm not sure what that is, and  
8 the \$3 billion deal.

9 So I ask you, as you're trying to figure out what you  
10 need to do to do your job, see if Plaintiffs focus on what you  
11 need to do your job or if they focus on the story they want to  
12 tell to get you angry and upset and not look at the evidence  
13 that you've seen in the last three weeks of this case.

14 I know it is very late, and I am very grateful to all  
15 of you for listening, but the hardest job is yet to come,  
16 because we're done talking. It is in your hand to decide, and  
17 we are very grateful, that we know you will take the time and  
18 the effort to come to a just verdict.

19 Thank you very much.

20 MR. SAMMI: Can you leave that slide up, please?

21 CLOSING STATEMENT

22 BY MR. SAMMI:

23 Hi, everyone. I want to address everything. It's a  
24 little out of character for me, and I don't, you know -- I'm  
25 pretty private. I'm a father of two. I have two girls, seven

1 and two, and I sit there, and I comb through this evidence. I  
2 have been on this case for two and a half years personally  
3 looking at this evidence.

4 But you don't have to trust me, but what you just  
5 heard is all emotion and misdirection, calling -- as if we come  
6 in here, and I cross-examine people, and I do this (indicating)  
7 because I'm mocking them or that we try to protect our rights  
8 and that means we're making fun of people. We're not making  
9 fun of people. We're not mocking them for making money. It's  
10 great if you make money in the right way.

11 Let's talk about some of these things.

12 The first thing I want to talk about is ZeniMax's  
13 alleged trade secrets were well known. I did talk about that.  
14 I talked about that yesterday with Professor Balakrishnan, with  
15 Professor Howe.

16 It's unbelievable to us, and it should be to you and  
17 it should be, frankly, to counsel for Facebook and Oculus,  
18 because it is one thing to come in here and say ZeniMax is a  
19 big bad company.

20 ZeniMax is a big bad company? This is Facebook, who  
21 bought this company over a weekend for \$3 billion. And it  
22 strains credulity to think that you can come in here and you  
23 can say chromatic aberration can be done in two hours. Two  
24 hours.

25 Did you hear anything about the fellow who was

1 working on it for a month and got that code?

2 what you saw was, I put it on the ELMO, and you  
3 said -- and now I'm getting a little passionate about this --  
4 I'm not making fun of anybody, and I'm not angry, I'm  
5 passionate about this because what you saw was, you saw her put  
6 something on the ELMO and say look at this small amount of  
7 lines. what could this possibly mean?

8 And that small amount of lines, their experts back it  
9 up and they say it's two hours, two hours. And a guy works on  
10 it for a month? And he gets sent this email, and the next day,  
11 9:36 in the morning, I checked in the solution to chromatic  
12 aberration. That's public? Yeah, we talked about that.

13 How about ZeniMax's disclosure of its own technology?

14 ZeniMax's disclosure -- we gave it away? ZeniMax  
15 gave it away? No. We never gave it away. It was under an  
16 NDA.

17 So much confusion, smoke and mirrors. Listen to the  
18 language.

19 They were showing it publicly. Palmer Luckey didn't  
20 invite any NDA. It was ZeniMax was showing it publicly. It  
21 was out in the public.

22 Did they mention the fact that they had the  
23 executable and they had additional data files? You saw her  
24 read that quote and skipped right over the -- when Mitchell,  
25 Nate Mitchell said additional data, just skipped right over it

1 and just said executable. There was a dot, dot, dot, skipped  
2 right over it.

3 We protected that information.

4 Palmer Luckey showing it, oh it is out there in the  
5 public? How about making copy after copy after copy of it and  
6 putting it on Dropbox and flying it to Hong Kong and then  
7 Valve. Leave it at Valve.

8 Now, that -- that's now Defendants say no, nobody  
9 ever left it at Valve. Really? I beg to differ, and I think  
10 the evidence shows that that's not -- that's not what happened  
11 at all.

12 The counterclaim. Let me dispense with a few of  
13 these things. I'm the one who is angry when I talk to  
14 Mr. Carmack, after everything Mr. Carmack has done. I had him  
15 on the stand, I said, "After all of this, you're suing us?"

16 Yeah. I said it. And I will say it again. For  
17 \$250,000 for us breaching his employment contract? After  
18 stealing the entire Rage code that has never been released,  
19 after walking out the door with 10,000 documents and lines of  
20 source code and that night emailing Brendan Iribe saying  
21 everything is on the table.

22 Forget the solicitation for minute. That's our  
23 lifeblood, our crown jewels. And they say you didn't make an  
24 offer? So I want severance after stealing you and robbing you  
25 blind. And the excuse is, you know what? He left a copy of

1 what is on the USB, so it is not really stealing, he gave it  
2 back.

3 It sure is stealing, because you keep it behind  
4 closed doors. The point of its value is that other people  
5 don't have it.

6 That's what we believe -- that's what the evidence  
7 shows about the counterclaim.

8 Now, misdirection. Let's talk about misdirection for  
9 a minute.

10 ZeniMax's tech not compatible with DK1, DK2, or CV1.

11 I wish I had time to move this table back over there,  
12 but let me just -- let me just try to explain this, what we've  
13 heard.

14 I don't even know what happened to it over the break.  
15 May I borrow -- is this your SDK?

16 MS. WILKINSON: Sure.

17 MR. SAMMI: So Mr. Carmack -- this is their SDK.  
18 Where is ours? I will just use this as ours.

19 This is our -- let's pretend this is our SDK. Okay?  
20 And I'm waving a lot of code because I do think Dr. Dobkin  
21 found code copied nonliterally. It is not just that it doesn't  
22 look the same, but I'm getting off topic.

23 This is our VR engine. Imagine it is. And it is  
24 sitting here on top of that USPS postal box that has two lenses  
25 and a screen, right? And then they go from that in six months,

1 in six months to DK1. Zero to hero in six months, right?

2 And then after that, there is DK2, and then there is  
3 CV1. There's three more things. They put -- and Samsung  
4 mobile. And they each had an Oculus SDK.

5 And you heard counsel used the word evolution.  
6 There's a reason why these things have version numbers on them,  
7 version 1.1, 1.2, 1.3, 1.4, because they are all evolved from  
8 each other.

9 And Mr. Carmack said it himself. Oh, they are  
10 evolved from each other. And then I said, well, all right,  
11 let's trace that DNA back.

12 They said, no, there's no DNA.

13 We trace it back, and what happens -- that was my  
14 karate chop -- boom, stops rights here. Nothing. Nothing.  
15 Nothing. After all the evidence you have seen for three weeks,  
16 the response is nothing. Adam and Eve is the first SDK from  
17 scratch.

18 28 emails is what they say? 28 emails. Oh, that's  
19 only, what, two every week or whatever it was, right?

20 I'm sorry. Does that matter to you? Does that  
21 matter to me? When I think of 28 emails with attachments and  
22 information asking how to solve this and how to do that, plus  
23 endless phone calls, how about did we count the text messages?  
24 Do those count as well? How about the in-person meetings?

25 I just finished a meeting with Carmack. Let's



1 discuss it.

2 The evidence is overwhelming that intellectual  
3 property was copied, used, trade secrets were transferred.

4 Mr. Altman says he knew that Oculus had ZeniMax tech  
5 and did nothing.

6 Now, this case has turned all into Mr. Altman. We  
7 just dragged them into court for no reason, no reason  
8 whatsoever, and we knew that Oculus had our tech but did  
9 nothing, or we looked at the Kickstarter. You heard that.

10 we looked at the Kickstarter, and we saw the  
11 Kickstarter, and we didn't do anything. Of course we did. We  
12 had that meeting.

13 Do you remember that meeting at QuakeCon? Do you  
14 remember the meeting where counsel for Defendants had witnesses  
15 on the stand that just denied the existence of the meeting like  
16 it never happened?

17 The questions from counsel were, can you point to any  
18 document or any witness and bring them into this court to show  
19 that this meeting occurred? Yeah.

20 And then I got up and showed you three of them. Of  
21 course it happened. That meeting at QuakeCon happened.

22 And what happened at QuakeCon, we had an NDA and  
23 we're trying to get a relationship going with you, we're trying  
24 to negotiate in good faith with you, above the table.

25 And I started this case with a timeline and it was

1 big and it's folded up back there, but it was a big timeline,  
2 and it had that fork in the road at that secret meeting and  
3 that fork is still down there. Nothing they say changes that  
4 fork. We didn't know anything that they were doing. Is that  
5 how honest people work?

6 I could even tell story upon story about I'm working  
7 in the garage, you can show baby pictures of Mark Zuckerberg.  
8 Do you want to talk about misdirection? We can talk about  
9 playing ping-pong in outer space in VR. That's all great.  
10 That's all great. But that's not what the evidence shows.

11 Misdirection.

12 Here is another one.

13 ZeniMax doesn't value its trade secrets. I can't  
14 find it in their financial documents. It's not a line item.

15 You had Dan Jackson come in here and said, you know  
16 what? You can't under generally accepted accounting  
17 principles, GAAP, that's the rules, companies don't do that.  
18 You don't think counsel for Defendants knows that about  
19 Facebook, the fact that Facebook's financial statement has them  
20 listed as a value of the company of \$350 billion and what's on  
21 their books is \$50 billion? Is that the crime of the century?  
22 No, that's what they do, because that is what the rules say.

23 And then they use that, pretending that they don't  
24 know that Facebook does that, and goes to ZeniMax and says  
25 ZeniMax, my goodness, you didn't value these trade secrets at

1 all.

2 How about the next id Tech 6 engine that is going to  
3 run games that you will see ads for on the playoffs, the Super  
4 Bowl, billion dollar AAA games. How about those, the engine  
5 that power those games? Do you really think those are on the  
6 line item?

7 No. ZeniMax is not in the business cataloging its IP  
8 when it comes to trade secrets as a line item on its  
9 accounting, and they know it.

10 what is their theory? I can add some sarcasm to my  
11 voice. And I'm sorry, it's not as if I'm getting mad and I  
12 don't mean to be yelling at you, because I -- that's not what  
13 I'm trying to do. But I can put some sarcasm in my voice and  
14 say, what's their theory? We somehow copied it and then we  
15 changed it? Yeah. Yeah.

16 It doesn't work. That's another one. It doesn't  
17 fit, right? This is the biggest red herring, one of the  
18 biggest red herrings of the case. Okay.

19 Remember these two? This is our code and this is  
20 their SDK. And the question they asked every single person --  
21 I don't know if they are smiling at me or something because  
22 they think I'm going off the deep end, but I will continue.

23 Our code and the SDK, okay, our code and the SDK and  
24 they ask every witness and they say, well, you know what? The  
25 SDK, your code won't work in our Rift. Your code, your VR

1 testbed from which this was derived, it won't work. That means  
2 it's not the same. Well, it won't work in this one. Like it's  
3 a piece of a puzzle. It won't work. It won't work in this  
4 one.

5 That doesn't mean anything. And Carmack and  
6 everybody knows it. Because these versions of their own SDK,  
7 they're not interchangeable, but they are all evolved from each  
8 other. Software isn't necessarily interchangeable as a puzzle  
9 piece. That not the test as to whether something was derived  
10 from something else.

11 Laches. That is a fancy word, talk about we waited  
12 too long to sue.

13 Can we have slide 4 up from the rebuttal side? I  
14 need to address this. If we can switch, and I will talk about  
15 the last two, the things I'm not supposed to talk about.

16 A party asserting a defense of laches. This is their  
17 defense. They say you waited too long, so you steal our stuff,  
18 you pretend to be negotiating above the table, and underneath  
19 you're getting massive tech transfer while we trust you because  
20 we have an NDA in place, right?

21 And the problem is -- the problem is that, oh, you  
22 know, gosh, you guys weren't vocal enough. I hid it from you,  
23 and now it's your fault.

24 The law says it doesn't work that way. That is  
25 why -- that is why if you're going to say that -- if you're

1 going to say that defense, you have to have clean hands.  
2 That's what the law says. It's literally the language. You  
3 can't have unclean hands.

4 They have to be clean, because you want people who  
5 have clean hands to say, it's not fair for you to wait that  
6 long or do that. You have to have clean hands. You can't --  
7 you can't steal. You can't lie. You can't cheat. And then  
8 come here before you and say, no, no, they waited too long.

9 How about some promises?

10 Let's get this one up. Can we get slide 14?

11 How much time do I have left? we will find out.

12 I didn't mean to put you on the spot.

13 MS. COHEN: 14 minutes.

14 MR. SAMMI: Okay. Thank you.

15 THE COURT: You get extra too.

16 MR. SAMMI: Thank you, sir.

17 This is from the opening. Okay? This is the  
18 transcript.

19 Now, I just want to stop on Mr. Hollenshead. We're  
20 going to bring him to you. He's here local. He's been  
21 involved in this whole thing. And he's not on either side,  
22 because he worked for them, he worked with John, and he left  
23 the same summer, but he didn't come to work for Oculus. So he  
24 doesn't have a side. And he's going to come in and tell you  
25 that it's Oculus's device, that Palmer was the inventor, and

1 that these guys don't own any of the technology and never did.

2 That is the promise that was made to you about  
3 Mr. Todd Hollenshead. He's the neutral, right? He's going to  
4 come in here and blow this thing wide up and say, I admit, I  
5 agree with them.

6 And what did he say?

7 "At this point in time was there any dispute at all  
8 in your mind that the work that Mr. Carmack had done for  
9 virtual reality was owned by id?

10 "No."

11 No. He didn't tell you -- he didn't tell you any  
12 such thing. Oh, this is all Palmer Luckey's. He owns it.

13 QuakeCon, meeting to discuss. How we would have a  
14 business relationship going forward.

15 He agreed the equity stake that ZeniMax sought from  
16 Oculus is a compensation component for the work that ZeniMax  
17 did on virtual reality.

18 Certainly the software and the content was owned by  
19 id.

20 I'm not sure if I have time to go back to that slide  
21 that looks like a flag with the diamond, the one I started  
22 with, that shows sort of how this all works. We saw it again  
23 and there is another game on the desk and it's held up the  
24 headset and say, oh, this is the hardware. Here's the game.  
25 Just buy a game.

1           You know what? If -- let's just break it down.  
2           Okay? You want to take what's in that USPS box and start a  
3           business? Go buy a game and play it on it and take it on the  
4           road. You can't find a store that sells a game? Just plug it  
5           in.

6           We talked a lot about --

7           There it is.

8           Just plug it in. You know why? Because you can't  
9           sell that to Facebook for \$2 billion. And they know it.

10          Now, let's talk about witnesses. Time and time again  
11         for an hour and a half, they didn't call this witness, they  
12         didn't call this witness, they didn't call this witness, they  
13         didn't call this witness. Well, let's think about something.  
14         Let's think about something. Who is the one man at their  
15         company who could have sat in that chair, sworn an oath and  
16         looked you in the eye and said, I wrote the SDK? Their chief  
17         software architect, Michael Antonov.

18          This whole case is about code and software. And what  
19         did they rely upon? They rely upon the Defendants' testimony,  
20         Mr. Carmack. Well, Carmack says -- Carmack says -- Carmack  
21         made \$100 million from ZeniMax, and you know what happened? He  
22         didn't want to stay because he wanted another payday and he  
23         took the technology and guess what? He sold it again to  
24         Facebook and made another 150 -- \$100 million.

25          Where is Michael Antonov? How many times have I said

1 his name in this courtroom, email after email? Maybe only 28.  
2 The guy who says basically at this time I need Carmack's code.

3 why isn't he there? I would love to have been  
4 standing at this podium, this podium and said, Mr. Antonov  
5 explain to us, let's go through this. What did you mean by  
6 this email? What did you mean by chromatic aberration? What  
7 did you mean that you didn't understand predictive tracking?  
8 What did you mean you didn't understand time warp? Tell us.

9 where is he? He's in California. He's been there  
10 for three weeks, I assume.

11 They want you to -- they want you to believe Barbara  
12 Frederiksen-Cross, who has an opinion. I don't think we have  
13 been disrespectful, first of all, to any witness, so I resent  
14 the implication that we're insulting people, whether it's  
15 Ms. Kennickell or Ms. Frederiksen-Cross or any of their  
16 witnesses. We have to find the truth.

17 And yeah, I just banged on the podium again, so I  
18 apologize for that.

19 But let's talk about Professor Dobkin and let's talk  
20 about Barbara Frederiksen-Cross. I think that you would agree  
21 with me that Professors Howe and Balakrishnan, that is just not  
22 credible. If someone is going to come in here and tell you it  
23 will take five hours to do something that it took them months  
24 and months to do, I don't believe it and neither should you.

25 Let's talk about Barbara Frederiksen-Cross and



1 Professor Dobkin. Like I said, one is supported by the weight  
2 of a whole host of other evidence.

3 Barbara Frederiksen-Cross admitted, she said there  
4 was a case where she wasn't able to finish her entire analysis  
5 because of destruction of evidence.

6 There it is. There's the board. The boards are down  
7 and they're turned around. And I understand why they want to  
8 do that. I want to put these up all the time, not just because  
9 I'm a zealous lawyer and I like to represent my client, because  
10 this -- these tell a story. These tell a story, an important  
11 story.

12 If everything is so innocent, it was just a mistake.

13 what do we hear? He didn't wipe his entire computer.  
14 Okay. Does that make a difference? If you keep stuff that is  
15 not incriminating and you wipe the stuff that is, because you  
16 didn't wipe the whole thing, you must be an innocent person?  
17 That doesn't make any sense.

18 Let me hit a few other points here. I heard this as  
19 well.

20 John didn't keep any secrets from Mr. Altman. That's  
21 a quote. You heard that about 20 minutes ago. John didn't  
22 keep any secrets from Mr. Altman.

23 Can we have slide 6 of the rebuttal slides?

24 John didn't keep any secrets from Mr. Altman. Okay.  
25 what Mr. Altman knows is on the right; what

1 Mr. Altman didn't know is on the left. And now they come in  
2 here and they say we should have done something. You didn't  
3 say something if your technology was being used.

4 We were in a relationship trying to negotiate with  
5 the other side and this is what they are doing behind our back.  
6 I'm going to do an aerospace email to Brendan Iribe from  
7 Mr. Carmack, Use this email from our discussions, non-id  
8 discussions. I just got home. Everything is on the table.

9 Why did I bring up Matt Hooper? Just for fun, the  
10 video? I got made fun of for that too. Oh, he's brought up  
11 Matt Hooper. Why does ZeniMax care about that? Because the  
12 email after that was, I think John and I have the same attack  
13 plan. It feels like I'm already working.

14 That was from Mr. Hooper, the same day he was led in  
15 from John Carmack to the office after we fired him and where  
16 does he work? He works at Oculus and who is he emailing? He  
17 was emailing Brendan Iribe.

18 Are these random events that are just not related?  
19 Is everything so innocent? How can it be if there is such  
20 destruction of evidence?

21 Mr. Rosen. He said those system logs were wiped.  
22 There was increased activity on the computer. This is what  
23 Mr. Rosen said. Let's be very clear. And yeah, I called him a  
24 court-appointed computer crime expert because that is what his  
25 credentials are. I'm not ashamed to say it. And he sat there

1 and he said, "Activity on the computer increased right before  
2 they collected it for evidence, in the days leading up for  
3 collection -- collecting it for evidence, and system logs were  
4 wiped."

5 what do the system logs do as well? Forget the  
6 92 percent zeros. what do the system logs tell you? They tell  
7 you what's going on. And they were wiped as well.

8 Bear with me for just a moment, and I'll close soon.

9 I think I have to go back to the basic story of four  
10 people who want to start a business who meet two days after  
11 seeing our demo, two days.

12 And they played the kickstarter video for you and  
13 they say watch this video, it is very cool, it's great, right?  
14 And you see all those people, the parade of people, I saw  
15 Palmer Luckey's stuff, I thought it was great.

16 what do they see? Do they see just a game? Yeah, it  
17 was a game, but it was a game with the VR technology that  
18 enabled it to work. They had no software of their own to show.  
19 None whatsoever.

20 So I go back to the story of four -- four people,  
21 four men in a room in Long Beach, California on July 4, 2012.  
22 Two days later they join a company, and they don't know how to  
23 do VR.

24 How is it possible that they can go from zero to  
25 here? Because they hired the right people?

1           Okay. If you hired the right people, then don't come  
2 to us for help under the guise of an NDA and ask for it. I  
3 believed your story then.

4           Mr. LaValle, they're saying -- are they saying  
5 Mr. LaValle copied code? No. What did I ask him? Listen  
6 carefully to the questions because they are trying to elicit  
7 the testimony.

8           I asked Mr. LaValle, when you started and were  
9 working on your version of head and neck model, was there code  
10 already that you were working on that was forwarded to you by  
11 Michael Antonov?

12           Yes.

13           That code is already copied code. So if  
14 Mr. LaValle -- nice guy that he is -- is writing code on top of  
15 that, it's still derived from ZeniMax's code.

16           I want to end with -- Judge, how much time do I have  
17 left, if you don't mind me asking. I'll try to --

18           MS. COHEN: Officially two minutes.

19           MR. SAMMI: Ms. Cohen, thank you.

20           Okay. Let me just say I have to hit a lot of things.  
21 I'm going to end with something.

22           we also got blasted for never using the word engine,  
23 VR engine.

24           Let's take a look at PX365. Go to the ELMO.

25           By the way, just as a reminder, that says "Notes from

1 meeting with John Carmack." So I wouldn't necessarily count  
2 the number of emails, especially if you don't include text,  
3 phone calls, and actual meetings.

4 Notes from John Carmack.

5 This is Michael Antonov. There he is. This is their  
6 chief architect, his engine. He's calling it his engine. His  
7 engine.

8 Does view matrix transformation pass through into the  
9 render thread to reduce latency, although he doesn't believe  
10 it's critical?

11 They want to know everything they can about what  
12 Mr. Carmack is doing and what he invented at id and ZeniMax,  
13 because they can't do it themselves.

14 I mentioned punitive damages, and I need to come back  
15 to that because what we've seen in this case is just not right.  
16 What we've seen in this case is wrong. There's right and  
17 there's wrong. And you can have every excuse in the book, but  
18 there's right -- there's right, and there is wrong.

19 Now, I went to the same school as Mr. Brendan Iribe,  
20 and I don't want to switch places with him. I'm sure he's a  
21 very nice man, and he's made a lot of money, but I don't agree  
22 with that behavior because it's wrong.

23 There's right and there's wrong. It's wrong to steal  
24 documents. It's wrong to destroy evidence in a court of law so  
25 a jury doesn't see it. It's wrong to lie, cheat, and steal on

1 affidavits. It's wrong to line your pockets and get rich off  
2 of someone else's technology, \$400 million, \$200 million,  
3 \$100 million, and that's just the individuals.

4 It's wrong to fly down here as Facebook's face, CEO,  
5 and look you in the eye and say, you know what, those guys at  
6 that table, nobody has ever heard of them. I don't know what  
7 they are. There's no merit to this at all.

8 That man finds out about the NDA from me. That's  
9 weird. Why is it weird? I'm opposing counsel. This is an  
10 operative document in the case. Before the deposition, no one  
11 shows him the NDA that governs after even -- before or after  
12 he's bought a \$3 billion company?

13 who wants to know the truth and who doesn't want to  
14 know the truth?

15 It's remarkable.

16 Speaking of the NDA, what's the testimony about the  
17 NDA?

18 The innocent hardworking folks who built this all by  
19 themselves, what's the testimony about the NDA?

20 You know what the testimony about the NDA is? The  
21 testimony about the NDA is that Palmer Luckey said he told  
22 everybody right around July 4, 2012, because they probably  
23 asked -- if I were you, I would -- how do you have this  
24 technology? I signed an NDA with these guys.

25 And, guess what, Nate Mitchell has no idea about the

1 NDA. He was in the room. He did. He said -- he claims not to  
2 know it until he got sued.

3 Mr. Iribe, his testimony is great. I never knew  
4 about it. I found out about it. Then I forgot about it again.  
5 And somehow it never got its way to Facebook.

6 And Mr. Carmack when Facebook was buying Oculus, did  
7 he know about the NDA? He forwarded the NDA to Palmer Luckey  
8 to get his signature. Of course he knew about the NDA.

9 Mr. Antonov, he's got -- who is not here -- he's got  
10 another version.

11 None of them match. None of them match. So this is  
12 not the innocent parade that we think it is.

13 Let me end by saying that we cannot allow in this  
14 country corporations who are seemingly respectable, like  
15 Facebook and Oculus, to act like this, to cover up such  
16 horrible things like destruction of evidence.

17 we can't allow individuals to line their pockets  
18 using theft as the means. Whether it's trade secrets or code  
19 or computers you found in a closet, it's wrong. And we all  
20 know it's wrong. And there's a way we can fix it.

21 Number one, ZeniMax has been asking for the  
22 compensation it deserves from day one from Oculus -- day one --  
23 and everybody has gotten rich, and we've gotten zero. It's not  
24 begging for money. What have we paid? Two and a half years of  
25 fighting in this litigation. And our reputation smeared. It

1 was smeared two weeks ago. Who has ever heard of ZeniMax?  
2 Because we were trying to protect our rights. That's the one  
3 thing. Compensate.

4 Next thing. Send a message. It's not right.  
5 Facebook is a \$350 billion company. It is an elephant in the  
6 room. It is a 900-pound gorilla. It doesn't care. Make it  
7 care. You can't do this. There is right and there is wrong.

8 Please make it right.

9 I want to thank you so much for your time and your  
10 attention, and I appreciate it.

11 THE COURT: Ladies and gentlemen, turn to page 87, a  
12 couple more pages of instructions.

13 You are the sole and exclusive judges of the facts.  
14 You should determine these facts without any bias, prejudice,  
15 sympathy, fear, or favor, and this determination should be made  
16 from a fair consideration of all the evidence that you have  
17 seen and heard in this trial.

18 Do not speculate on matters that are not in evidence.  
19 Keep constantly in mind that it would be a violation of your  
20 own sworn duty to base a verdict on anything but the evidence  
21 in the case. Your answers and verdict must be unanimous; that  
22 is, all of you must agree to each of your answers. You will  
23 carefully and impartially consider all the evidence in the  
24 case, follow the law as stated by the Court -- that's me -- and  
25 reach a just verdict, regardless of the consequences.



1           The fact that I have given you instructions about a  
2 particular claim or defense, or that I have not so instructed  
3 you, should not be interpreted by you in any way as an  
4 indication that I believe a particular party should, or should  
5 not, prevail in this case.

6           Also, you should not interpret the fact that I have  
7 given instructions about the Plaintiffs' damages as an  
8 indication in any way that I believe that the Plaintiffs  
9 should, or should not win this case.

10           Remember that any notes you have taken during this  
11 trial are only aids to memory. If your memory should differ  
12 from your notes, then you should rely on your memory and not on  
13 the notes. The notes are not evidence. A juror who has not  
14 taken notes should rely on his or her independent recollection  
15 of the evidence and should not be unduly influenced by the  
16 notes of other jurors. Notes are not entitled to any greater  
17 weight than the recollection or impression of each juror about  
18 the testimony.

19           It is your sworn duty as jurors to discuss the case  
20 with one another in an effort to reach agreement if you can do  
21 so. Each of you must decide the case for yourself, but only  
22 after full consideration of the evidence with the other members  
23 of the jury. While you are discussing the case, do not  
24 hesitate to reexamine your own opinion and change your mind if  
25 you become convinced that you are wrong. However, do not give

1 up your honest beliefs solely because the others think  
2 differently or merely to finish the case.

3 Remember that in a very real way you are the judges,  
4 judges of the facts. Your only interest is to seek the truth  
5 from the evidence in the case. You will now retire to the jury  
6 room. In a few minutes, I will send you this charge and the  
7 exhibits the Court has admitted into evidence. Upon receiving  
8 the exhibits and the charge, you should select a foreperson and  
9 commence deliberations. Do not deliberate unless all of you  
10 are present in the jury room. In other words, if one or more  
11 of you go to lunch together or are together outside the jury  
12 room, do not discuss the case.

13 If during the course of your deliberations you wish  
14 to communicate with the Court, you should do so only in writing  
15 by a note signed by the foreperson. I will then respond as  
16 promptly as possible, either in writing or by having you return  
17 to the courtroom so that I can address you orally.

18 I caution you, though, with respect to any message or  
19 question you might send that you should never state or specify  
20 your numerical division at the time.

21 During your deliberations, today, you will set your  
22 own work schedule, deciding for yourselves when and how  
23 frequently you wish to recess and for how long.  
24 After you have reached your verdict, you will return this  
25 charge together with your written answers to the foregoing

1 questions. Do not reveal your answers to anyone besides other  
2 members of the jury until such time as you are discharged,  
3 unless otherwise directed by me. After you have reached a  
4 verdict, you are not required to talk with anyone about the  
5 case.

6 In fact, I don't let lawyers talk to you about the  
7 case after it's over.

8 Your foreperson will sign in the space provided on  
9 the following page after you have reached your verdict.

10 Dated: January 26, 2017. Ed Kinkeade, United States  
11 District Judge

12 Now, I understand y'all aren't going to deliberate  
13 tomorrow. That's fine. You know I'm not going to be here  
14 tomorrow. So here's my suggestion.

15 You go back in there and then get ready to leave and  
16 come back Monday at 9:00 ready to work hard. Y'all have  
17 already worked awful hard. I know you're tired. I can look at  
18 you and tell. Your eyes are all red and everything, kind of  
19 like mine.

20 But -- so I don't want you to stay late tonight, and  
21 I never let people stay beyond 5:00 because it's downtown  
22 Dallas, and I don't mean that it's -- this is a horrible place,  
23 but I don't want y'all wandering around after it's dark. It's  
24 in the middle of wintertime, as much as we love living here in  
25 Texas.

1           So go back in there, wait a few minutes, pick your  
2   foreperson. If you want to do that, that's fine. You can tell  
3   David who that is. And then I want you to leave for the day,  
4   because it's after 5:00, 5:20.

5           So you'll -- enjoy Friday, Saturday, and Sunday. Be  
6   prepared to come back Monday and work hard. I'll be back then  
7   rested and ready, and so will you.

8           I will see you back then.

9           Thank you very much.

10          SECURITY OFFICER: All rise.

11          (Jury out)

12          (Discussion off the record)

13          (Recessed for the day at 5:19)

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1 I, TODD ANDERSON, United States Court Reporter for the  
2 United States District Court in and for the Northern District  
3 of Texas, Dallas Division, hereby certify that the above and  
4 foregoing contains a true and correct transcription of the  
5 proceedings in the above entitled and numbered cause.

6 WITNESS MY HAND on this 26th day of January, 2017.

7  
8  
9 /s/Todd Anderson

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